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GOVERNMENT AND POLITICS
in the United States



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GOVERNMENT AND POLITICS in the United States

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SCIENCE · ~~DEPAUW UNIVERSITY~~

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TO
MY STUDENTS PAST AND PRESENT, PARTICULARLY
TO THOSE FORMER STUDENTS WHO ARE ENGAGED
IN THE TEACHING OF POLITICAL SCIENCE, GOV-
ERNMENT RESEARCH, OR THE PUBLIC SERVICE

PREFACE

The author of a new text dealing with the government of the United States is more or less inevitably placed in a defensive position whether he likes it or not, for with the numerous good books already available members of the profession may be expected to pose the perfectly legitimate question "Why add another?" The present author confesses a distinct feeling of temerity in undertaking to make an appreciable contribution to what has already been provided. However, sixteen years of teaching the basic course in American Government may be expected to produce certain points of view as well as a number of conclusions as to what should be included in and what should be omitted from such a course.

For what it is worth, it may be noted that the experience referred to above has pointed in the direction of the conventional organization based on national, state, and local levels of government. At the same time emphasis upon the functional aspect of government seems highly desirable. Anyone who casually examines the text which follows will see that it starts out with an examination of the national government, proceeds to a consideration of state government, and finally ends up with a rather brief survey of local government; less apparent may be the constant attempt which has been made to point out what services are rendered by these governments and how their various branches and divisions actually operate at present.

Believing that an understanding of institutions is necessarily incomplete unless one is familiar with the human element, a considerable amount of space has been devoted to an examination of the backgrounds of the executive, administrative, legislative, judicial, and party officials who are entrusted with the handling of public affairs in the United States. Reasonable attention is given to the development of the various agencies and institutions, but those who desire a political history of the United States will doubtless feel that too little emphasis has been placed on this aspect. In reply the author can only state that it has been his observation that students are increasingly bringing from secondary schools as detailed a knowledge of American political and institutional history as can be offered in an introductory course

in political science on the college level and furthermore that too great an emphasis upon the historical side, important as that may be, constitutes an encroachment on the courses in American History elected by many students. The space that is saved by eliminating a lengthy consideration of the Articles of Confederation, the convention of 1787, and other topics is dedicated to items which should be of primary importance to present-day students. Separate chapters have been prepared dealing with "The Obligations of Citizenship," "Pressure Groups and Pressure Politics," and "The Role of Public Opinion." More attention is given to the judicial process and to the administrative services, particularly to those dealing with public personnel administration, foreign relations, national defense, and public planning, than is ordinarily the case.

Perhaps more than in any other field in political science an author of a basic text dealing with the government of the United States is indebted to colleagues, to government offices, and to research institutes. It is hardly feasible to list at this point the names of all of those who have been drawn upon for material or who have assisted in other ways—that has been done as far as possible in footnotes, bibliographies, and bylines—but specific mention may be made of Stephen Early, secretary to the President, Commissioner A. S. Flemming of the Civil Service Commission, C. E. Rightor of the Division of State and Local Government of the Bureau of the Census, John D. Millett of the National Resources Planning Board, the United States Information Service, the Council of State Governments, the Federation of Tax Administrators, the Department of Political Science of Mount Holyoke College, and L. A. Doran of the University of Oklahoma.

The greatest debt is probably that which is owed to Charles A. and Mary R. Beard, William B. Munro, and Frederic A. Ogg. The author has been substantially encouraged by their interest—one of them guided his work as a graduate student and assistant while the other three are alumni of the institution in which he has done most of his teaching—and in addition has had the advantage of using their distinguished texts in his classes over an extended period.

The students who have through the years constituted the author's classes have contributed so materially that it has seemed fitting to dedicate the book to them. The associates with whom the author has had the good fortune to work—Harry W. Voltmer, Vernon Van Dyke, W. W. Carson, and H. M. Stout—have helped by their sympathy.

and ideas; the first two have been good enough to read certain chapters of the manuscript and to offer suggestions. Finally, thanks are due to William Riker who served as assistant during the summer of 1941 and to Mrs. John Rightsell who carefully typed the entire manuscript.

No reference has been made in the Bibliographies to the books of readings and outlines prepared by Mathews and Berdahl, Rankin, Christiansen and Kirkpatrick, Coker, Pollock, Ewing and Dangerfield, Johnson, Mott, Maxey, Crawford, Kneier, Wright, Witman, R. Ewing, and others because it is assumed that these are known to teachers. Needless to say, a great deal of valuable material is here available for supplementary use.

HAROLD ZINK

April, 1942

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SECTION I

**THE NATURE OF THE
GOVERNMENT OF THE UNITED STATES**

CHAPTER I

THE GENERAL CHARACTER OF AMERICAN GOVERNMENT

A STUDENT of government is interested in many aspects of the United States. He cannot lose sight of the fact that the population is both large and varied, that the 132,000,000 human beings who constitute the people have in their veins the blood of almost all if not all of the diverse stocks of the white race, commingled with strains of other races. The millions of square miles of territory, located as they are in the temperate zone, separated by broad wastes of ocean from Europe and Asia, and including vast stretches of fertile agricultural lands as well as substantial natural resources in the way of iron, coal, oil, and copper, are of great significance. The remarkable combination of an industrialized economy which is overshadowed by that of no other country and an agricultural productivity which suffices to feed its teeming millions and even leave a surplus can hardly be overemphasized in understanding the achievements and tribulations of the country. The rich cultural background, the traditions of religious freedom, the latent enthusiasm of spirit, and the confidence that no problem however difficult is insurmountable, all play a part in the drama which serves as a background to American government. But these aspects, however important, are of collateral rather than of primary concern to the student of government; their detailed examination belongs to the sociologists, the economists, the geographers, the anthropologists, the psychologists, and others.

The political scientist is especially interested in the structure, organization, and operation of the government of the United States and the pages which follow will deal in some detail with these elements on the national, state, and local levels. In addition a student of government needs a general idea of the political institutions of the United States as a whole in order that he may view them in proper perspective with the other governments of the world; for even the most detailed knowledge of a single government is of slight avail unless its possessor can correlate that knowledge with the general theory and principles of government. Moreover, familiarity with a single government only makes for supernationalism, provincialism, fanatical overevaluation,

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and other weaknesses that are all too apparent in the world in which we live. Unless a student has some understanding of other political systems, it is frequently difficult for him to appreciate certain aspects of our own because he has no standard of measurement. Of course, it is not possible in the limited time available to analyze the governments of our sister nations in detail; that is reserved for the courses which deal with comparative and foreign government. But it will perhaps be possible to build up a general background against which to view the political institutions of the United States.

FORMS OF GOVERNMENT

The governments which human history records during the several thousand years which it covers have been so diverse that it is not an easy matter to classify them. Outward forms have presented a confusing array which becomes even more complicated when one takes into account the actual operations. For example, there have been kings, emperors, kaisers, czars, and many other monarchs of one kind and another at the head of governments, but not all kings even have exercised the same powers. In certain instances kings have ruled with an iron hand, permitting little or no freedom to their subjects; other kings have exercised considerable authority without being in any sense autocratic; while still other kings, for example the recent kings of England, have been the formal heads of governments which are actually democratic in character. Many classifications of governments have been attempted since Aristotle wrote his famous *Politics* more than two thousand years ago, but the scope of this book does not permit even a résumé. For our purpose it is perhaps satisfactory to base a classification upon the location of authority and hence to distinguish three general types: (1) governments in which the authority is exercised by a single person, (2) governments dominated by a few persons, and (3) governments which are controlled by the many.

GOVERNMENT BY A SINGLE PERSON

It is probable that the monarchical form of government has been more frequently used by the peoples of the world than any other, though it is not at present in vogue. As man emerged from the more or less primitive stage of political organization which involved the clan and the tribe, frequently with a single powerful

Classifica-
tion of
Govern-
ments

Monarchi-
cal

leader, it was more or less natural to develop a form of government which devolved around a single person: the monarch or king. In its simplest form monarchy bestows upon the ruler or king absolute authority in every sphere covered by government; indeed some of the monarchs have gone far beyond political matters and laid down rules in regard to family life, commerce, religion, social relations, recreation, and even intellectual endeavors. The king assisted by his ministers and agents ordains the laws, sees that they are enforced, collects the taxes and decides how the money shall be spent, and deals out punishment to those who are insubordinate, thus combining in himself executive, legislative, and judicial functions. Many of the monarchs have been so filled with a sense of their own importance that they have claimed to be the representatives of God on earth; the Japanese emperor is still regarded by law as a lineal descendant of the Sun Goddess.

As civilization developed and men became more assertive of their own place under the sun, the monarchical form was modified after long struggle into a limited type which retained the king as the **Limited Monarchy** head of the government but took away much of his authority. Legislative bodies were established to enact laws; courts were set up to administer justice; and administrative departments relieved the king of many of the routine tasks. The absolute type of monarchy largely ceased to exist in the seventeenth and eighteenth centuries, though there were isolated cases into the nineteenth century. The limited type was very popular during the nineteenth century, but it has now given way until there are few countries in which it still remains. Great Britain nominally retains the outward habiliments of a monarchy, despite its evolution into a representative democracy. Japan offers impressive devotion to its emperor as a priest and Son of Heaven, but the actual government has become that of a military dictatorship. Perhaps the plight of the king of Italy is the saddest, for he is hardly given even formal recognition with a duce to occupy the limelight.

In certain cases kings have become so arbitrary and ruthless that they have degenerated into tyrants. Again usurpers have arisen to seize the throne from a legitimate ruler, only to crush the **Tyrannical** citizens with an iron heel of oppression. Thus it may be perceived that the tyrannical form of government represents a degenerate type of the monarchical; a single person exercises all of the authority of government but in such a ruthless, harsh, irresponsible, and unprin-

ciplined manner that he becomes a scourge rather than a father ¹ to his people. If he is shrewd he usually disguises his sins against the people by professing the most pious aims or he diverts the attention of the citizens from their sufferings and his own iniquities by constructing elaborate public works, staging spectacular entertainments, or engaging in foreign aggression.² History is able to recite many instances of tyrannical rule; some of the ancient Egyptian pharaohs, rulers of certain Greek states, several Roman emperors fell into this category. During the Middle Ages and the early centuries of the modern age tyrants were commonplace in Italy as well as in certain other European countries. By the opening of the nineteenth century it seemed that the tyrannical form of government had run its course and for more than a century there were only isolated examples. Then following World War I there occurred a revival which has been perhaps the most striking single characteristic of recent years.

It is the custom to designate the modern tyrannies "dictatorships," but the underlying principles do not seem sufficiently different to justify setting up a separate class, though many of the details are, of course, adapted to a twentieth-century background. In this connection it is interesting to note that Duce Mussolini relies heavily on the advice which Machiavelli offered to an Italian tyrant several centuries earlier. Indeed in both Italy and Germany one is immediately aware of the emphasis placed upon the construction of public works, the gorgeous entertainments and displays held in connection with Nuremberg conferences and Fascist anniversaries, and the seizing of territory of sister states—the three activities which tyrants have always used to disguise their avarice for power. In this day and age the inhabitants of the earth do not relish unvarnished force or lust for power and hence the tyrants of the totalitarian countries constantly stress the fact that they are leaders—the Fuehrers and the Duces. But no one should be misled by such pretenses, for these dictators follow the practices of political bosses, not those of political leaders. Moreover, they also draft certain principles which they label as far superior to the "decadent beliefs" of the democracies. Thus Mussolini proclaims that man comes into his highest and sublimest state only when he fights, while both Hitler and Mussolini seek to con-

¹ Kings often encouraged their people to call them father. Even the Russian czars were often referred to as "Little Father."

² This advice was given by Machiavelli in his political classic, *The Prince*.

vince their subjects that the greatest honor that can come is to give one's life blindly without question for the fatherland. People become mere machines under the modern form of tyranny; they exist for the purposes of the state which is, of course, the dictator, rather than the state for their welfare. Human life is cheap in the eyes of a dictator—Hitler speaks calmly in his *Mein Kampf* of sacrificing the lives of millions of Germans to realize his end. Moreover, the tyrant of the twentieth century, like his ancient and medieval forbears, has little or no respect for the people; they live only to serve his ends. Their lot is to tighten their belts, shoulder hardships even to death, and always to do so without question. According to *Mein Kampf* they have no minds of their own and are to be guided by the propaganda, often consisting of the most outrageous lies, which the tyrant and his assistants devise for their consumption.

GOVERNMENT BY THE FEW

Another form of government bestows the authority to deal with public affairs upon a group of men rather than upon a single person. There are instances where this has been done openly and directly, but in general oligarchy, aristocracy, or elite government prefer to operate behind a screen. Thus the nominal form may be monarchical, democratic, or proletarian—a reading of the constitution would lead one to believe that the government was actually one of these forms. However, the king, the president, or the proletarian leaders are figureheads who have little or no power of their own and take their orders from an influential little coterie which prefers to remain behind the scenes.

At almost any time there are governments where the actual decisions are made by those who do not hold any public offices and the officials themselves are purely nominal. The aristocracy of England long played a leading role in the public affairs of that country; the possessors of great wealth in the United States have also been ascribed oligarchic status at times. However, despite the influence which British aristocrats or American millionaires undoubtedly have had and indeed continue to have in governmental affairs, there has been a distinct trend in both countries toward government of the many.

Oligarchy
and Aristocracy

Blooded aristocracies and oligarchies of wealth cannot be dismissed by the modern student of government, though in both cases they seem somewhat outmoded. At the present time considerable discussion cen-

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ters around government by the so-called "elite." Some people have lost whatever faith they ever had in the mass of the people, pointing out that large numbers of European people have been unwise enough to follow Hitler and Mussolini and that many people in the United States seem primarily interested in keeping political machines in power and getting what they can out of the government. Hence it is argued that government should be controlled by those who are intelligent, informed, and wise in their judgments. This suggests the aristocratic form of the Greek philosophers who interpreted aristocracy as something based upon intellect and character rather than upon birth or social position. Many of the arguments advanced in favor of government by the elite sound plausible, though there is a grave doubt whether the intelligent, the informed, and the wise could ever gain control of government and whether they could agree on what to do after they secured authority. People of this type are not known for their organizing ability; nor do they ordinarily have the same point of view or arrive at the same conclusions.

Government by the Elite

GOVERNMENT OF THE MANY

A third form of government is that which involves government "of, by, and for the people." Here the combined wisdom of the people is regarded as superior to that of any single king or tyrant or indeed to a group of men. Moreover, the democratic form emphasizes the supreme good as being the welfare of the people; political institutions are justifiable only in so far as they contribute to this end, never because of any glory or pomp which is attached to them. In the pure form of democracy the people assemble regularly for the purpose of deciding what the government shall do both as to policy and the levying of taxes and the spending of public funds. They may even assist in the carrying out of these decisions and the assessment of penalties upon those who refuse to abide by the group will. Obviously a pure democracy is possible only in a country where the territory is small and the number of adult citizens appropriate for deliberation. In the ancient Greek city-state these conditions sometimes existed, but they have long ceased to be feasible except in so far as local government is concerned. Some of the tiny Swiss cantons have been organized as pure democracies for centuries and continue to function on that basis; New England towns in the United States preserve the unadulterated principles of democracy in some of their town meetings. How-

Democracy

ever, democracy, as it is known today in practice, is usually of the representative type. The people authorize the adult citizens who have certain qualifications of residence and literacy to elect representatives who in turn enact the laws, levy the taxes, and appropriate the public funds. In addition some representative democracies provide for the election of executive and judicial officers, though others permit the legislatures to handle this function.

A quarter of a century ago it seemed that the democratic form might displace all others and the United States entered World War I "to make the world safe for democracy." At the conclusion of that war Germany transformed itself from a limited monarchy into a representative democracy, while the old Austro-Hungarian empire was broken up into a number of parts, some of which, such as Poland, set up nominally democratic governments, though Czechoslovakia provided for democratic political institutions in practice. The United States, England, and France strengthened their democracies and the prospects appeared bright. But the worldwide economic chaos growing out of World War I, the bitterness caused by defeat and the terms of the Treaty of Versailles on the part of Germany, and the supernationalism which inebriated many peoples, placed a tremendous strain on democracy. Critics blamed this form of government for difficulties with which it had little or nothing to do; unscrupulous gangsters driven on by a craving for power seized upon the sufferings and dissatisfactions which were rife as a means of hoisting themselves into power. Once in the saddle the Hitlers and Mussolinis were disposed to go to any length to maintain themselves and promised enlarged territory and even world domination to those who would follow their banner. Their piratical efforts led to the downfall of democracies, such as France and Czechoslovakia.

At the present time only two of the major world powers, the United States and England, operate under the democratic form. However, it must not be assumed that these are the sole survivors, for Canada, Australia, New Zealand, South Africa, and several of the Latin-American countries remain loyal. If one is to judge from the speeches of Hitler, democracy is on the run and will shortly disappear from the face of the earth because of its decadence, lack of guiding principle, indecisiveness, and general weakness. No one can deny that there are imperfections in the countries which retain democratic traditions, but the question is, Are these

Attacks on
the Demo-
cratic Form

Current
Status of
the Demo-
cratic Form

faults due to democracy or are they the result of other influences? There is considerable evidence that democracy is not only not responsible, but that the weaknesses are attributable to the fact that democracy has not been fully put into effect. It is obvious that a victory on the part of Hitler would jeopardize the remaining democracies and in all probability would mean the downfall of at least some of them. On the other hand, it is quite refreshing to note the extent to which democratic principles have been preserved by England during a period as difficult as the world has perhaps ever known during modern times. Parliament has remained in session; freedom of speech and of the press have been preserved to an extraordinary degree, even when the conduct and policies of the prime minister and the military leaders were being discussed; the British foreign service has been opened to others than the aristocrats; and the educational system gives promise of a much more democratic base. All in all, there is a probability that democratic principles will be more firmly entrenched after the world conflict than at present if a Hitler victory can be prevented.

Inasmuch as the United States is now one of the two ranking democratic governments and various devastating criticisms are being hurled at this form, it may be profitable to pause for a brief résumé of the strengths and weaknesses of democracy. Hitler has written that "he is strongest who travels alone" ¹ and that is good tyrannical dogma, for in one tyrant there is supposed to be strength while in the people there is alleged weakness. Of course, from the standpoint of one who wishes to guide without challenge the destinies of nations, this may be a good motto, but if the welfare of the group rather than the cravings of one man are to be determining then there is no assurance that truth is incorporated in that statement. Hitler may promise to bring unexampled glory and riches to the Germans; yet history does not show a single instance of a nation which has flourished for a lengthy period under tyrannical rule. That is not to say that temporary dictatorships have not sometimes served a useful purpose ² in times of emergency, but they have never glorified the "Fuehrer" principle as something to be permanently retained. Despite the sordid slums of New York and London, the drab mining towns of Wales and Pennsylvania, the unemployment records of both

¹ This is elaborated in his *Mein Kampf* in detail, though it has not been emphasized in Hitler's speeches to the German people.

² Franklin D. Roosevelt exercised such powers in 1933 that he was regarded as a dictator by some people.

England and the United States, and a hundred other imperfections of the democratic countries, it remains true that in no other countries have the people as a whole enjoyed as much freedom or as high standards of living.

Democracies are slower getting organized because it is not enough for one man to decide to embark upon a course which may involve the deaths of millions of his subjects as well as untold suffering on the part of the entire world, but speed in these matters may not be a good thing, particularly if an irresponsible tyrant is not on the other side. Hitler maintains that the American people are rotten within because they think only of their selfish comfort and are unwilling to give of themselves for any cause. No one can dispute the revolutionary character of National Socialism which has induced millions of young Germans to view their Fuehrer and his cause with fanatical zeal. On the other hand, the enthusiasm of the Italians has been much less apparent. Who can say how far the German zeal permeates down through the rank and file of the population or how enduring it will be, particularly when the excitement of the novel wears off? One has only to go back a few years in the United States to find an equally frenzied enthusiasm manifested by several million Ku Klux Klansmen, but its results were generally evil and its duration short. On any logical ground there is far more to fight for in democratic principles than under a system which makes men mere pawns, the state an ogre which devours human beings and calls on them to sacrifice almost every comfort, and gives the power over life and death to a single man who displays many signs of abnormality. If the people of the United States refuse to defend their democratic institutions it may prove that Hitler is right in so far as the decadence of the people is concerned, but it will not necessarily prove that democracy itself is at fault.

Finally, we come to an examination of the proletarian form of government which was outlined by Karl Marx almost a century ago and has more recently been engineered into effect by Lenin, **Proletarian** Trotsky, and Stalin in Russia. In a sense this is not a form of government at all, since in its Marxian version it aimed at the gradual "withering away of the state." Government was regarded as necessary to overthrow the propertied classes and to liquidate the last remnants of their institutions and influence, but after the proletariat had been placed firmly in control of all land, natural resources, factories, and services there would be no further use for government. The

people would then be wise enough to see that government was an invention of the propertied class and an unnecessary expense to those who followed the teachings of Marx, Lenin, and their associates. True proletarians could handle their social relations with others and manage their economy without assistance from any artificial institution such as government. However, after the Soviet government had been liquidating the Kulaks and bourgeoisie for two decades, Stalin modified the Marxian dogma by declaring that the "withering away" process would be dispensed with and that government would consequently remain a permanent feature of Soviet communism. In theory proletarian government goes a step further than democracy in emphasizing the importance of the group, reducing, as it does, the significance of the individual. Ideologically it stands at the opposite pole from tyranny. Yet strangely enough the actual operation of the Soviet government has been more like that of National Socialism than of democracy. The role of Lenin and Stalin has often suggested that of Hitler and Mussolini. There is so much controversy over the accomplishments of the Soviet communism that it is hardly possible to list them here.¹

FEDERAL AND UNITARY GOVERNMENT ✓

Governments may not only be classified as to their general form but also, particularly if they are democratic, on the basis of the distribution and location of their power. Two common types are currently encountered: (1) the federal and (2) the unitary.

If a number of independent governments join together to handle certain problems, such as protection against external enemies, which **The Federal Form** they cannot take care of satisfactorily alone, without surrendering their independence, it is said that a "confederation" has been formed. If the several governments go a step farther, give up their independence, and form a new government, at the same time retaining certain powers, this is known as a "federal" type. Under this system part of the authority is conferred on the central government, while the remainder is reserved to the component subdivisions or to the people. The thirteen colonies after declaring their independence from Great Britain first entered into a confederation which was expected to handle defense and certain other difficult problems. However, the confederation possessed no genuine authority and

¹ For a generally sympathetic study of this system, see Sidney and Beatrice Webb, *Soviet Communism*, rev. ed., 2 vols., Charles Scribner's Sons, New York, 1938.

could not even levy taxes; consequently its weakness was such that it failed to accomplish what it was intended to do. The convention of 1787, called to work out an arrangement for reducing the weaknesses of the confederation, decided to recommend an entirely new system of government which would be federal in character. Under this the national government was given definite powers relating to foreign relations, national defense, interstate and foreign commerce, and public finance, while other authority was reserved to the states or to the people. Canada, Australia, Mexico, Brazil, Switzerland, and Argentina are current examples of federal government.¹

If all of the power is conferred on a single government which is national in scope a unitary form results. This does not mean that such a government cannot have subdivisions, since virtually all governments necessarily have to organize under some such arrangement for administrative and local government purposes. But the authority resides in the central government and the subdivisions have only such power as the former sees fit to confer on them. As a matter of practice the central government may delegate substantially the same measure of local home rule which is provided under the federal form; the test is not what power is given but the final seat of authority. Under the unitary type this is always the central government. Great Britain, in contrast to the United States, has long functioned as a unitary government, though she has been liberal in permitting the counties and the boroughs a considerable measure of leeway.

While the United States was originally set up as a federal government and long remained in that category, there are those who believe that federalism has now been displaced by unitary government. The national government has undoubtedly gained large amounts of power which at one time were reserved to the states. The interstate commerce power of the national government, for example, has been expanded again and again until it now embraces a considerable proportion of all of the commerce of the country within its limits. The establishment of a powerful Federal Bureau of Investigation has involved some encroachment upon the police domain of the states. Nevertheless, though the national government is stronger than ever before and the states have lost sub-

The Unitary Form

Federalism versus Unitary Government in the United States

¹ Some of these are federal outwardly, but there is considerable question whether they are actually federal. Brazil, for example, is a case at point.

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stantial amounts of their exclusive power, it seems very questionable whether the movement has gone far enough to bring about what could accurately be designated "unitary" government in the United States.

SEPARATION VERSUS UNION OF POWERS

A third system of classification places the emphasis upon the concentration of supreme governmental authority within the framework of a single government. Using this scale, governments may involve separation or union of powers.

The framers of the Constitution of the United States saw fit to distribute powers fairly evenly among the executive, legislative, and judicial branches rather than to concentrate supreme political direction in any one of these branches. Hence the national government of the United States has long been known as one of "separation of powers"; it may be added that the states have followed the same pattern. It was the opinion of the members of the convention of 1787 that separating the powers would prevent tyranny, absolutism, and other characteristics which they associated with the English government. A complete separation of powers is hardly feasible in practice and the framers being men of experience in public affairs realized this. Consequently they tempered their arrangement by adding checks and balances. The legislative branch was checked by the President through the veto power and it in turn checked the executive through its power to appropriate money, impeach, and in the case of the Senate, confirm appointments and ratify treaties. The Supreme Court was checked by dependence upon Congress in several respects—for instance, appropriations and appellate jurisdiction—and by the President as regards appointments of justices and it shortly developed the practice of ruling on the validity of acts passed by Congress and approved by the President.

Though the framers were men of more than average maturity and experience, they seem to modern students of government to have been somewhat credulous in their enthusiasm for separation of powers. This provision may prevent tyranny, but it also leads to conflict and indecision. With power divided between the legislative and executive branches, it may require months to arrive at an agreement in regard to some pressing matter which requires immediate attention. One branch of government may be operating on one policy, while the other two are following

**Separation
of Powers**

**Results of
Separation
of Powers
in the
United
States**

a quite different course. The development of judicial review under which the Supreme Court undertook to say the last word as to the validity of legislative action brought about a measure of coordination, but it could be used only in a comparatively few instances and then usually required a year or two. Presidents sought to bridge the gap separating them from the legislative branch by asserting a general leadership in affairs of government and some of the abler chief executives achieved a large measure of success in their endeavors. Indeed it was believed by many that Franklin D. Roosevelt had brought about permanent cooperation between the President and Congress following his efforts of 1933. But while an emergency may bring temporary coordination and the use of patronage can usually be counted upon to pave the way to some action, the national government is still torn into parts by the provision which the framers made for separation of powers. Much of the indecision which is frequently identified with the democratic form is actually attributable to separation of powers.

It is interesting to note that the foreign governments which have studied the constitutional system of the United States have, with the exception of the Latin-American governments,¹ not been impressed by our system of separation of powers and checks and balances. Instead they have followed the English plan and concentrated the final governmental authority in a single branch, usually the legislative. Thus whereas the United States has what is often called "presidential government," the other democracies seem to prefer the cabinet or parliamentary type. Under this arrangement the executive and legislative branches are tied together in a harness which permits little of the pulling apart and at cross purposes which is all too common an experience in the United States. The executive functions are entrusted to a cabinet, the members of which are drawn from the dominant party in the legislative branch. The cabinet drafts a program for the government which is submitted to the legislature for approval; in case approval is not given the cabinet must resign² and give place to a new cabinet which can secure the support of the legislature. Therefore there cannot be conflict between the two which is more than momentary in duration, since lack of cooperation brings immediate reconstruction of the government personnel.

¹ Many of the Latin-American constitutions are purely nominal in importance and the practice is otherwise than the constitution specifies.

² But first it frequently dissolves Parliament and calls for an election to see whether the voters will not elect a new Parliament which will support its policy.

SPECIAL CHARACTERISTICS OF THE NATIONAL GOVERNMENT

In the foregoing paragraphs it has been pointed out that the government of the United States is of the representative democratic type, that it is federal rather than unitary, and that powers are divided among the branches rather than centralized in the legislature or the executive. It now remains to note several other characteristics which pertain to the national government.

In a federal type it is necessary to divide up the authority between the central and the state governments. This may be done by conferring specific powers on one and leaving the rest, in so far as they are not reserved to the people themselves, to the other or it may be achieved by enumerating the powers of both. Certainly a definite division must be made unless there is to be conflict and duplication. The framers of the Constitution were of the opinion that the wisest arrangement under the prevailing circumstances was to leave the states in possession of those powers which experience had indicated could be satisfactorily exercised by them and to grant the others specifically to the national government. It may be added that certain powers were reserved to the people and were not to be used by either government. Having arrived at this conclusion it remained to enumerate the powers which were to belong to the national government and this was done under some eighteen headings in the Constitution. The difficulties of the government set up under the Articles of Confederation demonstrated quite conclusively that a central government must be given authority over interstate and foreign commerce, foreign relations, national defense, and the levying of taxes to produce funds for its own operation; these spheres are the main ones which were specifically conferred on the national government.

In so far as the national government was given certain powers it is supreme in the exercise of those powers. Moreover, the states are not permitted in the carrying out of their functions to interfere with the national government. A separate system of federal courts was established to render it possible for the national government to enforce its decisions; in cases of conflict between the national and state governments the Supreme Court received authorization to work out a settlement. Inasmuch as the fields given to the national government are of far-reaching importance, the supremacy of that government became apparent from the first and has remained firmly established for more than a century and a half.

Though the original Constitution made no mention of implied powers which would permit the national government to expand its enumerated powers to keep pace with changing conditions, **Implied Powers** ✓ the Supreme Court approved that interpretation of the Constitution in 1819 in the *McCulloch v. Maryland* case.¹ Hence the national government is not static in its authority, for as new problems have presented themselves it has frequently been possible to imply the authority to handle them from one or more of the powers enumerated in the original Constitution. This has sometimes required delay because the Supreme Court was reluctant to permit such an expansion of federal powers, but in the end it has usually been accomplished. This characteristic has naturally led to the strengthening of the national government through the years, even though the states have had to be reduced in extent of power.²

Although the framers of the Constitution appreciated the importance of giving the national government supreme powers in certain areas, they also were mindful of the possibility that abuse might creep in and consequently they imposed several **Limitations** *Fundamental* limitations. The taxing power, for example, was restricted by the prohibition against export taxes and the requirement that direct taxes must be apportioned among the states according to population. No *ex post facto* laws or bills of attainder were to be passed; no titles of nobility could be granted; no preference should be given by any regulation of commerce to the ports of one state over those of another; the writ of habeas corpus was not to be suspended except in cases of rebellion or invasion. Almost immediately after the Constitution became effective ten amendments were added to meet objections which had been raised; eight of these recited a fairly long list of limitations which were to be imposed upon the national government in order to protect individual personal and property rights. These will be discussed in detail at a subsequent point,³ but among them were provisions that private property could be taken only for a public purpose and then after just compensation, that freedom of speech and the press should not be abridged, and that a jury trial must be granted in both civil and criminal cases of major importance.

¹ This topic is discussed in greater detail in Chap. 4.

² The doctrine of implied powers is dealt with in more detail in subsequent chapters dealing with the growth of the Constitution and the Supreme Court. See Chaps. 4 and 22.

³ See Chap. 6.

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CHAPTER II

THE PLACE OF THE STATES

IT HAS been said that the states have at present less exclusive power than ever before in their history, yet that they are more active than at any previous time. On its face this statement may seem quite inconsistent, for the diminution of power would ordinarily be accompanied by general lack of vigor. However, in the case of the states the rule has been broken. There has been an increase in activity in spite of a severe loss of exclusive domain. It should be pointed out, though, that the former has not necessarily stemmed from the latter; in other words the present tempo of state operation is by no means entirely the result of the gradual assumption of authority by the national government. To a large extent the current energy displayed by the state governments may be attributed to the greatly enlarged role of government in general in the United States. At any rate, despite their reduced scope as far as exclusive powers are concerned, the states without exception are now spending more money, employing more people, and carrying on more varied functions than ever before.

General
Status
Today

It is very difficult for students of the middle twentieth century to appreciate the enormous loyalty and distinctive pride which citizens displayed toward the states during the early years of the republic. The national government was new and struggling; the states, while recently freed from colonial relations with England, could in certain cases look back upon almost two centuries of history. Consequently it was not especially strange that those who had been long established in Virginia should think of themselves as primarily Virginians and only incidentally as citizens of the United States. Had it not been for the depressed economic conditions and the involved conflicts among the states, it is possible that the confederation, which the states entered into after their declaration of independence from England, might have continued in existence for some years.¹

Early Position of the States

¹ One school of historians goes so far as to declare that a delay of a few months would have changed the entire picture. The economic situation was rapidly improving in 1787. With greater prosperity the demand for change would have waned, it is asserted.

The adoption of the Constitution in 1789, which substituted a federation for a confederation and provided for a central government endowed with fairly extensive powers over commerce, national defense, foreign relations, and finance, necessarily changed the position of the states.¹ However, it required time for the rank and file of the people to adjust to the new status. Indeed for a number of years there was a widespread tendency to cling to the old sentimental attachment for one's state and to tolerate but scarcely admire the groping and somewhat unimpressive central government.

As the national government displayed more and more vigor and proved that it was capable of handling difficult problems, the prestige of the states began to wane, at first more or less imperceptibly, but as time went on with increasing distinctness. Nevertheless, there were large numbers of persons who clung to the old concept of state sovereignty and who looked with pronounced displeasure upon the growing role of the national government. Every student of American history is familiar with the states' rights debate which raged so furiously and at the same time so eloquently for more than a half a century prior to the Civil War. Although tradition and sentiment supported the right of the states to sovereign authority, even their refusal to accept the decisions of the national government and their alleged right to secede, still during this period the states were slowly but surely surrendering their position of primacy. The increasing complexity of the social and economic life of the nation, the ramifications of foreign relations, and the rapid movement of the population westward all contributed to the trend which transferred authority from the states to the nation. The Civil War decided the states' rights debate in favor of the union.

Although the states steadily lost power after the Civil War, the process was comparatively gradual. During the closing years of the century, there was even somewhat of a halt, largely because the Supreme Court declared that the clause conferring the power over interstate and foreign commerce on the national government did not extend to manufacturing, agriculture, mining, or lumbering.² The beginning years of the new century witnessed a renewal of national government expansion into the state domain, but

¹ A confederation is a loose union of independent states; a federation involves the establishment of a central government with considerable authority.

² See *United States v. E. C. Knight Co.*, 156 U. S. 1 (1895).

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the decision of the Supreme Court in the Knight case hung constantly as a Damocles sword over such transfer. Then came the worst depression in the history of the country in the years following 1929. The demand for vigorous action by the national government increased in intensity until it attained Gargantuan proportions. The New Deal drafted an elaborate program which carried the activities of the national government into almost every phase of human endeavor, irrespective of state claims. Although the Supreme Court attempted to protect the states against the flood, the pressure became too great even for it to withstand.

During the 1930's, when the Supreme Court was reformed by the appointments of President Roosevelt and the national government began to engage in virtually any function that it saw fit to undertake, it seemed to some students of government that the states had lost their very reason for existence. Professor W. Y. Elliott prepared an impressive list of reasons why the states should be abandoned entirely and a new system of regions set up to handle those affairs the national government found it inconvenient to undertake.¹ He pointed to the fact that states vary widely in population, area, and wealth, that their boundaries are often artificial, and that in many cases they are too small to be satisfactory units for the administration of public business. Even a casual consideration of his arguments reveals an imposing array of support. A variation in population from Nevada, with approximately one hundred thousand inhabitants, to New York, with some thirteen million, is, to say the least, striking. Rhode Island's area when compared with that of Texas is very small indeed. In providing for the federal reserve banking system, the federal deposit insurance plan, and the social security program states lines are either ignored or states are grouped together into areas more suitable for administration. A glance at the metropolitan regions of New York or Chicago will indicate the artificial character of state boundaries. From a logical standpoint the ten million or more people who constitute Greater New York should be under a single jurisdiction; actually they reside in three states. Similarly the people who make up metropolitan Chicago have common economic and social problems which would point to their inclusion in one political area, but they are also distributed at present among three states.

Current
Role of the
States

¹ See W. Y. Elliott, *The Need for Constitutional Reform*, Whittlesey House (McGraw-Hill Book Company, Inc.), New York, 1935, Chap. 9.

Yet illogically enough, the states display great vitality. They may be unduly small in certain cases, lacking in authority, inadequately organized, and otherwise unsatisfactory, but they show surprising tenacity in maintaining their identity. The fact that many of them can look back over a long history militates against their abolition or reconstruction. Despite all of the arguments that have been advanced in favor of their liquidation, almost no serious consideration has been given to the problem by any considerable number of people.

It is possible that a disaster, such as has led to the reorganization of the departments in France, might cause far-reaching changes in the state system in the United States.¹ The supplanting of republican forms by a totalitarian type of government might accomplish such an end, although it is only fair to note that the *länder* in Germany have displayed surprising persistence.² Short of such cataclysmic experiences in the United States there does not seem to be any immediate likelihood of extensive rearrangements in the number or boundaries of the states. The national government will doubtless continue to exercise many powers which were once definitely associated with the states, despite pleas for a return to the "good old days" of local control of industry, labor, and public welfare. It is even probable that the national government will further invade the domain of the states because of an increasing sentiment for federal activity in the fields of public education and public health. Nevertheless, the states will probably continue to carry on ambitious programs of local public works and to provide local government and police protection. Every indication points to their continued expenditure of vast sums of money and the employment of large numbers of persons. The national government will lay down the broad policies and have the final decision perhaps, but the state governments will be depended upon, as they are now, to carry out the details of the program. Hence, despite the disappearance of claims to exclusive power, the states will be very busy indeed in the actual conduct of government.

THE PROCESS OF ADMITTING STATES

The thirteen states which had been colonies of England and which carried on a war to gain their independence became states of the

¹ After the defeat of France by Hitler the Vichy government reduced the number of departments by combining some of the small ones into areas more suited to administration.

² Some of the minor *länder* have been joined together and the *länder* powers have been severely pruned, but they continue to exist.

United States by joining together into a federal union. They considered themselves independent, sovereign states and only reluctantly bestowed certain powers relating to foreign relations, commerce, and defense upon a central government. But they went through no formal process of being admitted as states, other than ratifying the Constitution. **The Original States**

In the case of the other thirty-five certain formal requirements had to be met before they became states. Under the Constitution Congress is given wide latitude in admitting new states so long as it does not disregard the prohibitions referred to above concerning the dividing or combining of existing states. The first step toward acquiring statehood is that of petitioning Congress for admission. The inhabitants of a territory may conduct a poll to indicate their sentiment or they may produce other good evidence of their desires. Congress may be favorably impressed by a minimum of effort on the part of the territory, or again it may require many years of persuasion and repeated petitions before success is achieved; a great deal depends upon the times. If political considerations are helpful it is likely that prompt action will be taken by Congress, as for example in the case of Nevada which was admitted despite its tiny population. On the other hand, if the majority party would not benefit from a step and there are elements which actively oppose it, statehood may be held up for years, as was the case with New Mexico and Arizona. If Congress approves of the proposed state, an enabling act is usually passed which authorizes the election of delegates to a convention for drafting a tentative constitution. After this constitution has been accepted by a majority of the voters in the territory it goes to Congress for review. Congress may reject it altogether, accept it without change, or indicate that modifications will be necessary before approval can be given. Finally, after all conditions laid down by Congress have been met, a joint resolution admits the territory to statehood. **Formal Requirements**

Inasmuch as Congress has a free hand in prescribing conditions that must be satisfied before statehood will be conferred, a territory has no alternative but compliance with these demands, however unreasonable it may consider them to be. While, of course, it is always possible to wait until a new party has a majority in Congress or until the political heads of those who were responsible for the rejection have fallen, still territories frequently waive their desires and meet the congressional stipulations. After **Status of Special Conditions Imposed by Congress**

Congress has acted favorably and statehood has been granted, there is no possibility of subsequent revocation. Consequently, the newly admitted states sometimes disregard commitments which they were forced to make. When those commitments relate to "political" matters, the Supreme Court has upheld the right of the states to ignore conditions imposed by Congress as a prerequisite for admission. Thus Oklahoma could move her capital in 1910 despite a provision in the enabling act which forbade such change prior to 1913.¹ And Arizona could not be restrained from setting up a system of recalling judges, although a similar device had been dropped from the original constitution to meet congressional desires. However, if the change has to do with "contractual" rather than "political" matters, then the newly admitted state cannot escape so easily. In the case of Minnesota, public lands were given to the new state with the specific stipulation that proceeds therefrom should be used for educational purposes. After admission the demand for improved roads became insistent and hence it was decided that some of the revenue from land sales would be employed for road construction. The Supreme Court refused to permit this diversion on the ground that acceptance of the land by Minnesota carried with it a contractual obligation to use the proceeds for the purpose specified by Congress.²

It has often been stated that the states are equal irrespective of the date of their admission. In other words, newly admitted states have the same rights and powers that the original thirteen states enjoy. On a strictly legal basis this assertion is accurate, for all of the states have the same relative power in enacting legislation and in handling local problems. However, no one supposes that the forty-eight states are equal in influence, in wealth, in population, in area, or in many other respects. New York sends forty-six persons to the national House of Representatives, whereas Nevada, Wyoming, and several other states must content themselves with only one. It is obvious to anyone that New York's influence in at least the lower house of Congress is far greater than that of most of the other states. Texas has an area of more than a quarter of a million square miles which makes it larger than most countries, while Rhode Island, with 1250 square miles, embraces less than 1 per cent as much territory. Not only is the aggregate wealth of Illinois far

Equality
and
Inequality
of the
States

¹ See *Coyle v. Smith*, 221 U. S. 559 (1911).

² See *Stearns v. Minnesota*, 179 U. S. 223 (1900).

greater than that of Mississippi, say, but the per capita wealth of the former is all out of proportion to that of the latter. While, as has been pointed out above, it is customary to think of the states once admitted as formally equal, actually that equality is largely a legal fiction. In most political relationships the large and wealthy states have proportionately more power and influence than the small and poverty-stricken ones.

Now that the entire continental United States except the District of Columbia is included within the boundaries of the states, it might seem quite improbable that additional states would be admitted. And indeed the day of large-scale admission is over. Nevertheless, there are indications that the number of states may sometime in the future increase to forty-nine, fifty, and even beyond that number. Hawaii has cast longing eyes on statehood for a number of years. She points out that she has a larger population than several states, that she pays more federal taxes than several others, and that she has maintained educational standards higher than those of certain states. After much fruitless activity Hawaii finally was authorized by Congress to poll the citizens of the territory on the question of statehood; this was done in 1940 and showed a definite desire for admission. There is considerable continental opposition, however, because of her numerous residents of Oriental descent. Moreover, it is alleged that the Navy does not look with favor upon Hawaiian statehood because of effects that status might have on national defense. What action may be taken by Congress, however, remains to be seen. In the case of Puerto Rico a pledge of eventual statehood has been given, but there is some question whether the majority of residents of that territory would regard such a grant as a satisfactory substitute for independence. Alaska has been viewed by some observers as the most likely candidate because of the white character and common culture of its population, but the small number of residents and the large area militate against immediate statehood.

The Question of Additional States

There is some discussion of further subdivision within the continental territory of the nation. Perhaps the most serious possibility involves California. The spectacular growth of the southern section of the state has fostered an intense rivalry between the older north and the booming south. The location of the capital in the northern part is not only inconvenient but unpalatable to the vigorous southerners. Likewise, there is the movement on the

Proposed New Continental States

part of several metropolitan areas toward separate statehood—St. Louis has gone so far as to advertise itself as the forty-ninth state. On logical grounds there is a good reason for conferring statehood on the metropolitan areas of New York and Chicago particularly. Certain problems, such as transportation, water, and sewage, could be more easily handled by a unified political system; the long-standing and deep-seated conflict between those cities and their states could be obviated. Both of these cities, even without the population and area enlargements that would result from separate statehood, have larger budgets, employ more people, and carry on more difficult functions than their states.¹ But in both cases there is the record of machine-domination and political corruption which seems to have been the rule rather than the exception.² Most important of all the reasons that make separate statehood for these cities doubtful is the constitutional requirement necessitating the consent of the states involved. Hitherto there has been very little which would indicate that the several states concerned would give any serious consideration to the matter.³ While the states may regard the cities as sinks of iniquity, centers of crime, and the playthings of political bosses, still they do not forget the heavy taxes paid by the enormous wealth centered there.

LIMITATIONS IMPOSED UPON THE STATES BY THE CONSTITUTION

In general, the states have all powers which are not expressly conferred on the national government or reserved to the people. Nevertheless, the framers felt it wise to lay down certain limitations on the exercise of those powers. A number of these limitations which are included in the first eight amendments and deal with the rights of citizens will be examined in some detail a little later.⁴ However, some of the most important have a more general bearing and will be considered at this point.

The states under the Articles of Confederation had enjoyed the taxing power in its totality, while the central government had had to

¹ New York City ordinarily has an annual budget of more than \$600,000,000, or approximately twice that of New York State. The more than 150,000 employees of New York City dwarf the less than 50,000 state employees.

² The record of New York City under the La Guardia administrations has been quite good, but over a period of years Tammany has dominated the affairs of that city.

³ In 1935 a bill was introduced in the Indiana General Assembly providing that Lake County should be freed from Indiana so that it could join Chicago, but this bill received no serious consideration.

⁴ See Chap. 6.

beg for the morsels that fell from the states' tables. This situation was, of course, intolerable and entered to a considerable extent into the demand for a revision of the Articles. The new Constitution remedied the weakness by giving the national government the direct authority to levy taxes, but it also left the power of the states in the tax field more or less unimpaired.

Restric-
tions upon
the Taxing
Power

It did, however, lay down several specific prohibitions or restrictions, while the Supreme Court has read others into it. With the irritating experiences involving levies on commerce fresh in mind, the framers inserted a clause which forbade any state to lay "any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws"¹ without the consent of Congress. Congress does not consent to such an imposition, with the result that states have left that field entirely to the national government. In this same category may also be mentioned a prohibition relating to the levying of tonnage duties.² The due process clause of the Fourteenth Amendment which commands a state not to deprive anyone of "life, liberty, or property without due process of law" has sometimes been applied by the courts in such a manner as to limit the taxing power of states. However, during recent years the general attitude of the federal courts as far as state taxation is concerned has been distinctly sympathetic—so much so that some competent persons feel that too much leeway has been permitted. It has been popular during recent years for the states to pass laws which tax chain stores at a very much higher rate than independent mercantile establishments—in certain cases the rate may be fifty or more times higher for chains. In Louisiana the chain-store tax law provided that the number of stores throughout the United States should be used as a base for computing the tax on outlets in that state owned by a chain.³ These state taxes impose heavy burdens upon chain stores, but the Supreme Court has refused to interfere.⁴ The contract and equal protection clauses of the Constitution have at times been interpreted in such a way as to limit the taxing powers of states.

¹ Art. I, sec. 10.

² Art. I, sec. 10. The consent of Congress may justify tonnage duties, but this is not given.

³ See *Great Atlantic and Pacific Tea Co. v. Grosjean*, 301 U. S. 412 (1937). Where two stores were operated, an annual tax of \$10 was imposed by the Louisiana law; where more than five hundred outlets are run by a chain, the tax was \$550 on each.

⁴ See *State Board of Tax Commissioners v. Jackson*, 283 U. S. 527 (1931), for a good statement of the attitude of the Supreme Court.

While the Constitution contains no specific prohibition of state taxation of federal instrumentalities, the Supreme Court decided at an early date in the history of the republic that this was implied.¹ The court declared that it would cause endless trouble if the states were permitted to hamper the Federal government by levying taxes and that conversely it would not be wise to permit the national government to harass the states through use of the taxing power. This general rule continues to apply, but it has been modified somewhat recently and may perhaps undergo additional modification in the near future. Fearful that any taxation even remotely involving the national government might be an entering wedge toward serious consequences, the Supreme Court ruled that states could not tax the salaries of federal officials.² After many years had elapsed, Congress under the leadership of President Franklin Roosevelt decided that there was no adequate basis for exempting state officials from federal taxation or, conversely, federal officials from state taxes. No burden would be imposed on the governments themselves by such taxation; indeed such action would merely put public officials on the same basis as private citizens in bearing their fair share of government costs. The Supreme Court upheld this departure from established practice;³ and now, as a result, states which have income taxes uniformly include federal officials and employees. Going further, the Roosevelt administration has indicated that it sees no reason why the holders of state and local securities should not pay federal taxes on their securities or why the states should not expect owners of federal securities to pay reasonable taxes. The local officials, led by Mayor La Guardia, have opposed this extension of the taxing power on the ground that it would make local financing more difficult, but there is some reason to expect such a change.

States are, of course, not permitted to tax the property of the national government, unless specific consent is given. In the case of national banks, which are in reality private property, Congress has waived exemption, but in general this limitation remains in effect and seems likely to continue. Attempts have been made by the states to tax the property of the Reconstruction Finance Corporation, but as recently as 1941 Congress specifically de-

¹ See *McCulloch v. Maryland*, 4 Wheaton 313 (1819).

² See *Dobbins v. The Commissioners of Erie County*, 16 Peters 435 (1842).

³ See *Graves v. New York, ex rel. O'Keefe*, 306 U. S. 466 (1939).

clared that the R.F.C. could not be so burdened. Those states in which T.V.A. holdings are situated have raised a hue and cry because such large amounts of T.V.A. property have been withdrawn from state tax lists that it is very difficult to finance local government activities. To meet this criticism the T.V.A. makes certain voluntary payments to state and local governments in lieu of taxes, but no actual taxes are paid.¹

The authority to regulate interstate and foreign commerce is expressly given to the national government, leaving intrastate regulation to the states. Since the definition of intrastate commerce has been whittled down until it is but a remnant of what it once was, the states have found themselves more and more restricted in dealing with business practices. As long as manufacturing, mining, agriculture, and lumbering, as well as local distribution, were included under intrastate commerce, the states had considerable regulatory authority. When during the 1930's the first four of these were partially transferred to the interstate classification, the role of the states was greatly reduced. To some extent the use of the police power may permit state action; also, the recent liberal attitude on the part of the Supreme Court in the matter of taxing businesses in interstate commerce has served as a consolation prize.²

"No state shall enter into any treaty, alliance, or confederation. . . . No state shall, without the consent of Congress, enter into any agreement or compact with another state or with a foreign power."³ This constitutional provision has effectively eliminated treaties between the states and foreign countries and concentrated such authority in the central government. However, agreements or compacts with other states in the United States are another matter. In this day of rapid transportation and interdependence the states are constantly being confronted with problems that involve sister states. Large numbers of laws are passed by every state legislature that have some effect upon neighboring states. Many of these issues are comparatively minor and may be adjusted by correspondence or personal conferences between officials of two states. In such instances it is not the custom to seek the consent of Congress,

**Restrictions
upon the
Power to
Regulate
Commerce**

**Foreign and
Interstate
Relations**

¹ Tennessee still maintains (1941) that these payments fall far short of taxes lost as a result of T.V.A. acquisitions of property.

² *Fox v. Standard Oil Co.*, 294 U. S. 87 (1935); *Great Atlantic and Pacific Tea Co. v. Grosjean*, 301 U. S. 412 (1937).

³ Art. I, sec. 10.

although a strict interpretation of the word "agreement" might call for such approval. However, there are so many minor difficulties that it would be somewhat of a burden to ask Congress to give formal permission for every negotiation; moreover, the time element would be important.

Ordinarily only formal agreements and compacts are brought to the attention of Congress and there has been a tendency to carry only compacts involving several states to Washington for approval. Thus Indiana during 1935-1939 carried on extensive negotiations with Michigan, Missouri, and certain other states in regard to the taxing, importation, and sale of beer and liquor. These have produced several two-party interstate agreements; but Congressional consent has neither been asked for nor given.¹

States cannot without the consent of Congress "keep troops or ships of war in time of peace" "or engage in war, unless actually invaded or in such imminent danger as will not admit of delay."² **Military Affairs** Congress has in a few instances permitted the operation of unimportant vessels of at least a semimilitary character; consequently this limitation is not too onerous. As for engaging in war, the states seem to be glad to have the national government assume that responsibility.

"No state shall coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts."³ **The Monetary System** In the early days of the republic these prohibitions were unpopular in some quarters because the states had had their own currencies and their citizens wanted cheap money. The second part of the limitation was more or less avoided during the years prior to the Civil War by permitting state banks to issue notes and scrip which served substantially the same purpose as state bills of credit. The abuses in connection with this practice together with the desire of Congress to foster a strong system of national banks led in 1866 to legislation taxing notes issued by state banks out of existence.⁴ Since that time these constitutional limitations have continued in full force.

Finally, there is the important clause in the Constitution which reads: "No state shall pass any law impairing the obligation of contracts."⁵

¹ For additional discussion of this topic, see the following chapter.

² Art. I, sec. 10.

³ Art. I, sec. 10.

⁴ Upheld by the Supreme Court in *Veazie Bank v. Fenno*, 8 Wallace 533 (1869).

⁵ Art. I, sec. 10.

As far back as 1819 the Supreme Court examined this limitation in deciding the famous Dartmouth College case.¹ New Hampshire took steps to make a state university out of Dartmouth College, which had been chartered by the English crown as a school for Indians, with a trust fund for that purpose. After the agents of New Hampshire had already seized the property of Dartmouth, the original trustees sought to have their control restored by resort to judicial process. The case finally reached the Supreme Court of the United States, where it was argued in part by Daniel Webster and the opinion was prepared by Chief Justice Marshall. Citing the contract clause the Supreme Court decided that New Hampshire could not legally take over the college, for the donors of the original funds had entered into a contract which was recognized by the English crown when a charter was granted. Some years later the court modified the sweeping character of the Dartmouth College case to some extent—some students regard the *Charles River Bridge v. Warren Bridge*² case as an actual reversal. This case, which involved a state charter for the construction of a bridge to be free after a maximum of six years close to a toll bridge which had been built under a charter granted in perpetuity, led the court to lay down the principle that states were not bound by implied terms of a contract. So far as specific provisions were concerned, a state could not lawfully impair, but nothing could be claimed against a state that was not clearly mentioned in the contract. As the Supreme Court pointed out in its opinion in the latter case, progress would be impossible under any other interpretation: "We (would) be thrown back to the improvements of the last century, and obliged to stand still."³

Impairing
the Obliga-
tion of
Contracts

Although the contract clause is still used by the courts to prevent

¹ *Dartmouth College v. Woodward* is reported in 4 Wheaton 518 (1819).

² Reported in 11 Peters 420 (1837). According to Chief Justice Cooley of the Michigan Supreme Court, "It is under the protection of the decision in the Dartmouth College Case that the most enormous and threatening powers in our country have been created; some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country, than the States to which they owe their corporate existence. Every privilege granted or right conferred—no matter by what means or on what pretense—being made inviolable by the Constitution, the government is frequently found stripped of its authority in very important particulars, by unwise, careless, or corrupt legislation; and a clause in the Federal Constitution, whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil." See T. M. Cooley, *Constitutional Limitations*, rev. ed., Little, Brown & Company, Boston, 1927, p. 335.

³ Quoted from C. G. Fenwick, ed., *Evans' Cases on American Constitutional Law*, rev. ed., Callaghan and Co., Chicago, 1938, p. 951.

state action, it is a less serious hindrance than might be imagined. Acting upon the suggestion of Justice Story in his opinion in the Dartmouth College case, the states ordinarily now protect themselves by inserting provisions in charters for revocation. If states have safeguarded the future by providing that charters may be modified and disregarded for cause, or if compensation is awarded, or in the event that the public interest demands, they have nothing to fear in the contract clause. Another mitigating fact has been the severe reduction in the period of time covered by charters; in the old days they sometimes ran perpetually and very commonly extended over anywhere from ninety-nine to one thousand years. At present they are more likely to be granted for a period not to exceed twenty-five years.

Practical
Effect of
the Con-
tract Clause

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CHAPTER III

FEDERAL-STATE AND INTERSTATE RELATIONS

TECHNIQUES OF FEDERAL CONTROL OVER STATES

THE most obvious method which the national government has employed in invading the domain of the states has been the actual taking over of state functions. The states have at times, especially in periods such as that following 1929, proved ineffective in dealing with difficult problems. To some extent this has been because the problems were of a character transcending state lines; again it has been due to the large-scale financing necessary. Public sentiment has focused on the national government after the state governments have proved their inability to cope with the situation. Consequently Congress has been impelled to enact statutes charging agencies of the national government with responsibility.

Actual Assumption of State Functions

Of course, cases involving such federal exercise of power have invariably been brought to the Supreme Court, which has in many instances declared such a transfer of authority valid. Still the extent to which the national government has actually taken over the exercise of state functions is frequently exaggerated. It is true that there have been a number of instances over a period of 150 years, but they have not been commonplace. The expansion of the Federal Bureau of Investigation in the early 'thirties represents an action of this type. State and local police forces found themselves more or less helpless in the face of the gangsters who, making use of the latest weapons of crime, were literally terrorizing large sections of the country. Appeals were lodged in Washington even during the Hoover administration for federal assistance, but the reply was made that the national government had no authority to enter such a field. Finally, the situation became so critical that the F.B.I. was reconstructed and given the authority to root out the most powerful of these public enemies. But, even here, it should be noted that the efforts of the national government supplemented rather than supplanted state police activities. Likewise, the establishment of a nation-

Extent of Assumption of State Functions

wide old-age annuity system represents an invasion of an area once associated with the states, but few of them had done much in exercising such a power. Also, the fixing of minimum wages and maximum hours is another case in which federal authorities have entered a field of former state dominance; yet here again action has been limited to certain employers whose business is carried on in more than a single state.

More important than the direct assumption of state powers has been the system of grants-in-aid which the national government has devised. **Grants-in-Aid** Because states lack financial resources and breadth of vision, their efforts have fallen short of desired standards in certain instances. Consequently, pressure has been brought to bear on Washington to take a hand. Congress for various reasons has not seen fit to substitute direct federal for state control;¹ rather it has preferred to set up certain standards and policies which it regarded as desirable. Then, it has appropriated large sums of money which might be granted to states that saw fit to meet the specified standards. Usually, though not always, the grants are made on a fifty-fifty basis, that is, each cooperating state must add an equal amount to what it is permitted to draw from the national treasury.

In the 1920's it became apparent that a national system of highways was needed not only for the convenience of motorists and truckers but for purposes of national defense. It is probable that Congress acting under its war powers and the post-offices and **Examples of Grants-in-Aid** post-roads clause² of the constitution might have been justified in building a highway network by using only federal funds and relying solely upon federal administrative agencies, but that did not seem the wise course. States already had the beginnings of such a system; public opinion would not have favored direct federal activity; and the expense would have been enormous. The chief need was not for something new, but for the coordination and improvement of what was already begun. Hence Congress has over a period of years provided substantial funds which might be granted to states that desired to improve certain highways designated by the national bureau of public roads. The grants-in-aid have been available provided the state paid half the cost and observed minimum standards of construction. No

¹ There was long the question of Supreme Court approval. Local sensitiveness also entered in. All in all, it was simpler to use an indirect technique.

² Art. I, sec. 8.

state has been compelled to participate in the program, but the provisions have been so attractive that all forty-eight states have, as a matter of fact, taken advantage of the funds. The result has been the construction of the most elaborate system of highways in the world.¹ Likewise in payments to aged dependents, aid to dependent children, blind pensions, vocational education, and a number of other fields, the national government has preferred to use the grant-in-aid technique rather than to assume direct control. All in all, this method has achieved very substantial results in those fields in which it has been used.²

There has been sharp criticism of the grant-in-aid technique by some of those who have opposed the invasion of state police and other powers by the federal authorities. Such a method has been characterized as "undemocratic," "perverting in its influence," "backdoor" or "backstairs," and a "violation of the spirit, if not the letter, of the Constitution." The very effectiveness of the technique has probably heightened the bitterness of the criticism. The strict constructionists quite naturally regard with extreme disfavor a method which permits a more powerful central government without formal amendment of the Constitution or even the use of the doctrine of implication by the Supreme Court. Likewise, it has been criticized by prosperous states because it means that the federal taxes their citizens pay are used in poorer states for what they call "local" purposes. Largely on these grounds Massachusetts challenged the constitutionality of the Maternity Act of 1921, which provided grants-in-aid to those states drafting approved programs for dependent children.³ The Supreme Court refused to hear the case, however. Finally, it is maintained by some critics that such a method is violently unfair because it capitalizes the popular sentiment of "something for nothing." These opponents contend that the states have no actual choice in meeting the standards set by Washington because of the pressure exerted by their voters to take advantage of the federal grants of money involved.

**Objections
to the
Grant-in-
Aid Tech-
nique**

The effectiveness of grants-in-aid has been so clearly demonstrated

¹ The new German military highways have received considerable publicity. They may be more elaborate than any single highway in the United States, but in their totality they are modest in comparison with our own network.

² Many public buildings have been constructed with federal aid. See J. F. Isakoff, *The Public Works Administration*, University of Illinois Press, Urbana, 1938.

³ *Massachusetts v. Mellon*, 262 U. S. 447 (1923).

that it seems altogether probable that this technique will continue in frequent use. The Federal government can lay down policies and set up standards without the immense burden of actual administration. Moreover, the same end can be attained without arousing the storm of criticism that ordinarily follows a direct invasion of the state domain. In view of the popular interest in more uniform standards of public education¹ throughout the United States and the heightened consciousness of the importance of good health on the part of the general population,² it will not be surprising if grant-in-aid programs related to these problems are set up by the national government.

Occasionally the national government has used either the states or state officials as agents. In the case of grants-in-aid this is invariably the course pursued, but even in the absence of financial assistance such use may be made. In the Selective Service Act of 1940 state governors are permitted to name the local boards which pass on the individual cases of those who are called for military training. These state officials not only send out the calls, but exercise considerable discretion in classifying those within the legal ages, thereby determining whether they shall be exempted or sent to active service. State election officials are charged with certain duties in connection with the choice of presidential electors, Senators, and Representatives and may be held to account in federal courts for violations of the requirements laid down by the national government.³ A recent decision of the Supreme Court has extended the control by the national government to state officials who are responsible for primary elections.⁴ State welfare officials act as personnel officers in behalf of the Civilian Conservation Corps; state health employees have duties in connection with the federal food and drug acts; state game wardens are responsible for enforcing the Migratory Bird Act of 1918.

Many of the administrative agencies of the national government carry on extensive research programs which are of interest to state as well as to federal authorities. There is a considerable difference of

¹ Standards vary widely from state to state on the basis of length of term, equipment, training of teachers, etc.

² Almost one-half of those called for military service during 1940 and the first half of 1941 were found sufficiently defective in health to be rejected.

³ See *Ex Parte Siebold*, 100 U. S. 371 (1880).

⁴ In *Newberry v. U. S.*, 256 U. S. 232 (1920) primary elections were held not under federal control, but this was reversed in 1941 in the New Orleans primary case. The Supreme Court divided four to three in this case.

opinion about the extent to which the findings of federal research workers influence the action of state agencies and their related local governments. Proponents of the studies carried on by the United States Office of Education, the United States Public Health Service, the Bureau of Standards, the Children's Bureau, and many other federal departments in Washington believe that much good is accomplished by familiarizing state and local officials with what federal research uncovers. Critics point to the comparatively large expenditure of public funds for such purposes and deny that any one reads or pays attention to the reports. It is doubtless safe to say that less attention is given these conclusions than they warrant; on the other hand there is evidence that they exert a considerable influence in certain cases. It is common knowledge that state and local police officials make large use of the fingerprint file which is maintained by the Department of Justice. This, of course, serves in many instances to identify criminals who are wanted for serious crimes by several governments and thus brings the national government into the state police function.

**Federal
Research**

Finally, the role of the national government has been extended in a minor degree by collaboration which the states may seek. A state may request the assistance of federal forces in connection with labor troubles, floods, and other emergencies. In coping with insect pests, human epidemics, and animal diseases, federal experts sometimes come to the scene at the invitation of state officials. State colleges solicit the aid of the Bureau of Agricultural Economics in educating farmers and other rural workers along lines of general public affairs.¹ Somewhat different but falling into the same category was Secretary of State Hull's communication to the forty-eight state governors in 1940 in which he appealed for state collaboration in doing away with state practices which constituted barriers against unfettered interstate trade.²

**State-Federal
Collaboration**

RESPONSIBILITIES OF THE NATIONAL GOVERNMENT TO THE STATES

The Constitution specifically requires the national government to protect the states through the use of its military arm: "... and shall

¹ The Bureau of Agricultural Economics has furnished speakers, sometimes as many as twenty at a time, for more than one hundred such schools.

² In the guise of the police power states have erected barriers shutting out milk, trucks, and so forth from other states.

protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened)

against domestic violence.”¹ Although the states support National Guard units to which they have access during ordinary times, in periods of emergency these may not suffice to maintain law and order. Hence there is the constitutional charge on the national government to protect state territory

against foreign invasion. This is, of course, a more or less obvious responsibility which would be exercised whether there were the obligation or not—it is impossible to conceive of the national government voluntarily permitting a foreign power to invade its territory, especially when that territory is part of a state. The second part of this obligation is somewhat more meaningful, since it is a common responsibility of both the national and the state governments to suppress domestic disruptions throughout the land. In those cases where violence and internal disturbances reach such proportions that a state is itself unable to cope with the situation, federal forces are, therefore, guaranteed by the Constitution if state officials request such assistance. Except in very unusual circumstances state police facilities are now adequate to handle labor troubles, race riots, and other serious fracas; consequently it is uncommon for states to ask for federal aid.

In this connection it may be noted that the federal authorities, alleging the primacy of federal property or rights, sometimes wish to take a hand when the state officials refuse to ask for assistance. Because of prolonged labor difficulties President Cleveland sent federal troops to Illinois although Governor Altgeld not only did not ask but openly resented such action. The explanation offered for such an unwelcome step was the necessity of protecting the mails. Acting under his military powers President Roosevelt sent in troops in 1941 to bring order in the California plant of the North American Aviation Company. Thus it would seem that federal assistance is available not only in those rare instances when a state desires it, but also when it does not ask for and even opposes such intervention. Military forces may not be frequently sent into a state in these days, but the “G-men” are likely to congregate in cities or states in which the local authorities fail to keep crime within reasonable limits. The local police may resent the presence of the federal agents—as has been the case at times;

**Federal
Action
without
State Re-
quest**

¹ Art. IV, sec. 4.

yet there is very little that they can do about it beyond refusing to co-operate. Even that course may be dangerous, for the G-men may bring pressure to have those officials responsible removed.¹

Under the terms of the Constitution the national government guarantees a republican form of government to the states.² This clause reads very well, but an examination of the facts reveals that it has comparatively little meaning in practice. That is not to say that it does not have a good moral effect or that it might not be invoked if any widespread movement away from republican forms developed among the states. The trouble is that no adequate machinery is set up to enforce such a guarantee during ordinary times. The Supreme Court has repeatedly ruled that it is not for the courts to attempt to exercise such a function which, they say, falls under the political rather than the judicial category.³ Hence it is left up to Congress and the President to see that the states do have republican governments. The President, however, has numerous other duties to occupy his attention; moreover, it would frequently be very unwise from a political standpoint for him to inquire too closely into the actual operation of the government of a certain state. Congress has the authority to refuse seats to Senators and Representatives of states that disregard republican principles and may also withhold federal appropriations from such states. But there is a wide chasm between the power to do something and the actual use of that power, an excellent example of which is found in the hesitancy with which Congress acts to guarantee republican government. If seats were refused or appropriations withheld, a great hue and cry would doubtless be raised—a situation rarely if ever relished by that body. Moreover, the individual Senators and Representatives are very reluctant to establish a precedent that might sometime be embarrassing to their own positions or states. Hence the Huey Longs, the Matt Quays, the D. C. Stephensons, and their boss colleagues are given a free hand in scuttling the republican institutions of the states in which they operate. There may be widespread notoriety; the press may bring charges; occasionally a member of Congress will have the temerity to arise from

A Republican Form of Government

¹ It was alleged that such pressure from the F.B.I. resulted in the ousting of the chief of the state police force in Indiana.

² Art. IV, sec. 4.

³ Perhaps the best statement of the Supreme Court on this question is to be found in *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U. S. 118 (1912). See also *Luther v. Borden*, 7 Howard 1 (1849); and *Mountain Timber Co. v. Washington*, 243 U. S. 219 (1917).

his seat and castigate these arch enemies of popular government; but Congress does not find it expedient to take any action. If, for instance, Hitler's "fifth columnists" should succeed in taking over several state governments, it might be that Congress would act; but this guarantee has certainly done very little to ward off the attacks of the conventional type of political boss.

The framers of the Constitution were fearful that territory of their states might be alienated by the national government. Therefore, they inserted clauses which they believed would serve to prevent such action. Territory may not be taken from a state without its specific consent;¹ a state cannot be divided up into two or more states unless it agrees to such action; two or more states shall not be joined together to form a single state unless they so desire. Inasmuch as states are quite sensitive in these matters and since the prohibitions are absolute, there has been none of the manipulation which certain states have indulged in with counties. Indeed, such an effective barrier is set up that desirable changes have been ruled out. Thus despite all of the discussion about creating separate states in the metropolitan areas of New York and Chicago and despite the impressive arguments advanced for such action, no progress has been made in that direction. New York and Illinois, New Jersey and Indiana, Connecticut and Wisconsin would have to agree to such a course and it is almost inconceivable that their consent could be obtained. Nevertheless, under stress even these prohibitions can be stretched somewhat, as was done in dividing Virginia during the Civil War. The "consent" which Virginia gave was obtained from a group of Union supporters who were drawn almost entirely from what is now West Virginia—the section of Virginia which desired separate statehood.

OBLIGATIONS OF THE STATES TO SISTER STATES

The Constitution commands the states to give "full faith and credit" to "public acts, records, and judicial proceedings of every other state."² In a governmental system which includes forty-eight states there is almost bound to be a great deal of variation, especially in matters of detail. Thus one state will require two witnesses to a will, while another will specify three; one state will recognize common-law marriages, while another will regard only civil

¹ Art. IV, sec. 3. This does not prevent the national government from taking limited areas for post offices and forts by eminent domain.

² Art. IV, sec. 1.

marriages as valid. If every state clung churlishly to its own minute forms and persistently refused to recognize records and acts of other states which did not have exactly the same requirements, there would be great confusion, inconvenience, and loss of time. To obviate such chaos the framers agreed upon a provision which orders every state to accept at full value the acts, public records, and court proceedings of all other states. On its face, this stipulation would seem to apply to both civil and criminal cases, but the Supreme Court has decided that only civil matters are involved.¹ To require the states to enforce the laws relating to misdemeanors and felonies passed by sister states might cause hardship; moreover, the fact that the Constitution makes arrangement for extradition of fugitives from justice would seem to imply that the framers did not intend the "full-faith-and-credit" clause to apply to penal proceedings and acts.

Under the full-faith-and-credit clause states must give full recognition to the deeds, mortgages, notes, wills, contracts, and similar instruments of sister states as long as these have met all the requirements of the state where they originated. Thus a will which was made by Henry Smith when he resided in Florida and which complied with Florida laws must be regarded as valid by Ohio where he lived at his death, even if the Ohio regulations in regard to witnesses, form, and so forth, are not the same. Moreover, the judgments of courts relating to civil matters must be accepted and enforced by the courts of sister states. If Mary Jones secures a judgment from the circuit court of Michigan against Betty Davis to the amount of \$5000 and then discovers that Betty Davis has moved to Tennessee, she may take a certified copy of the court record to the latter state with the expectation that the courts of that state will give it full value and as far as possible carry it out.

**Examples
of What Is
Included in
Full Faith
and Credit**

Although the full-faith-and-credit clause operates in general for the best interests of the public, there are instances where it would seem to work a hardship. Kansas does not recognize the validity of gambling debts and specifically forbids its courts to assist in their collection. Yet if Henry Little, a citizen of Kansas, gives an I O U to a professional gambler in whose clutches he falls while on vacation in New Orleans, Kansas courts are compelled to enforce a court judgment which the gambler obtains from a Louisiana court. The Little family may be dispossessed of their home

**Hardship
Resulting
from Full
Faith and
Credit**

¹ See *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265 (1888).

in Kansas if there are no other resources for satisfying the judgment.

The full-faith-and-credit clause has presented many difficulties in connection with divorce decrees. The states vary as widely in their divorce laws as perhaps in any other field. Some states grant divorce under almost any circumstances, while others are very strict and refuse such decrees except in cases in which unfaithfulness can be proved. It is to be expected that New York, which has very strict laws on the subject, would object to accepting at full value the divorce decrees of Nevada, which is most liberal. Particularly is the New York moral sense aroused when its residents go to Nevada temporarily and solely for the purpose of obtaining a divorce and then return to take up their New York abode. In order to stave off a complete refusal on the part of New York to follow the full-faith-and-credit clause, the Supreme Court has sought a middle ground in such cases. Where the state of the married domicile ¹ grants a divorce, every other state must accept that divorce without a question. However, if the state which dissolves the contract of marriage is not the state of married domicile but a state to which one of the parties has gone for the purpose of securing such a release, that divorce *may* be accepted by other states, but there is *no obligation* in the matter.²

To assist in the apprehension of criminals the framers of the Constitution inserted a declaration that states should surrender to sister states fugitives from justice. This process, sometimes known as "rendition" but more often as "extradition," frequently serves a very useful purpose in preventing criminals from escaping punishment. The Constitution permits the states no discretion, reading, "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."³

Nevertheless, there is no effective means of forcing recalcitrant states to obey such a mandate. Consequently every now and then a state will refuse to turn over a fugitive from justice.⁴ New Jersey did not see fit to surrender a fugitive from a Georgia chain gang because public opinion had become aroused to

¹ The state of married domicile is the state in which both parties have resided and lived as husband and wife. ² *Haddock v. Haddock*, 201 U. S. 562 (1906). ³ Art. IV, sec. 2.

⁴ These cases receive a considerable amount of publicity at times, but they are relatively rare when compared with the number of successful extraditions.

the alleged inhumanity of chain-gang punishment and the lack of any adequate relationship between the offense committed and the punishment meted out. In another case New York would not honor an extradition request of Massachusetts for a labor organizer who had been connected with strikes in Fall River. The hearing conducted by the New York governor revealed that the labor organizer had not left Massachusetts in any particular hurry, that he had returned to Massachusetts on several occasions after the strike which formed the basis for the charge, and that Massachusetts had taken no steps to accuse the labor organizer of violations of its laws for several months afterward. It did not seem to New York, therefore, that there were sufficient grounds for granting the request. The fact that the categorical command of the Constitution is sometimes violated should not, however, cause great alarm. In almost all cases of refusal the governor has had valid reasons and has been supported by public sentiment of the country at large.

The extradition process is important enough to be explained in some detail. If the police authorities of Lincoln, Nebraska, for example, learn that Alex Brown, alias Dick Finch, alias Downey Moe, a criminal whom they want, is temporarily residing in Kansas City, Missouri, they at once get in touch with the police of Kansas City, often by long-distance telephone, and request that Brown be apprehended and held pending extradition. The Lincoln police then call upon the governor of Nebraska, or his secretary who handles such matters, for formal extradition papers addressed to the governor of Missouri and naming the said Alex Brown as a fugitive from justice wanted in Nebraska. These papers must specify the exact crime for which Brown is wanted and must ordinarily offer a grand jury indictment, a process of information, or some other evidence that Brown has committed such an offense. The Lincoln police representative will in person take the papers furnished by the Nebraska governor to the governor's office in Missouri. The request may be granted as a matter of routine, especially if Brown does not raise an objection. However, if Brown alleges that he is being "framed" or that a fair trial cannot possibly be expected in Nebraska, it is quite possible that the governor of Missouri will conduct a hearing during which he will examine the accused as well as hear the evidence and arguments of the representative of Nebraska. If the extradition request is granted, the accused is turned over to the Lincoln policeman who proceeds to return

him to the jail at Lincoln, Nebraska, to await trial. If, as occasionally happens, extradition is refused, Brown is set free.

Finally, the states are required by the Constitution to extend recognition to the citizens of other states within their borders, for "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."¹ The framers realized that there might be a disposition on the part of some states to discriminate against the citizens of other states. Such license would have led to internecine strife and in turn would have weakened the whole fabric of the republic. This requirement is not so clear and definite as it might be and during recent years has been variously juggled about to permit some degree of local favoritism. It does not, of course, confer the privilege of voting. In general, it does mean that freedom of movement is permitted, although several states have under one guise and another attempted to circumscribe this. California has a statute under which an elaborate system of inspection has been set up on the highways leading into the state; motorists must surrender any citrus fruits that they may have, lest the orchards of California be contaminated. Twenty-seven states had enacted statutes prior to 1941 prohibiting the entry of migrants from other states who lacked sufficient money or resources to prevent their becoming public charges. However, in a far-reaching decision announced in the fall of 1941 the Supreme Court unanimously declared that such laws violated a fundamental right guaranteed by the Constitution and consequently were null and void.² Several states have whittled down the right of citizens of other states to move about by setting up ingenious rules and regulations in regard to the use of commercial vehicles with out-of-state licenses.³ Nevertheless, it can scarcely be denied that this obligation which the states are asked to shoulder serves even today a very useful purpose; without such a limitation the situation might be far more serious than it is.

¹ Art. IV, sec. 2.

² This decision was made in the case of *Edwards v. California*, commonly known as the "Okie Case." Professor A. N. Holcombe in an address to the American Political Science Association in December, 1941, characterized it as one of the most important decisions of a century and a half.

³ A New Mexico law taxing caravans at \$7.50 and \$5.00 was upheld by the Supreme Court in *Morf v. Bingamon*, 298 U. S. 407 (1936). On the other hand, when California attempted to place a prohibitive tax, under the guise of an inspection fee, on caravans of new cars entering the state, the Supreme Court refused to uphold it and ordered that the fee be no more than the cost of inspection. *Ingels v. Morf*, 300 U. S. 290 (1937).

OTHER INTERSTATE RELATIONS

Where some very important matter arises which calls for agreement on the part of several states, it is the custom to seek the consent of Congress. However, Professor Graves points out that of **Interstate Compacts** some eighty interstate agreements drawn up prior to 1932 approximately twenty were not brought to Congress.¹ As state relations become more complicated, the necessity for interstate compacts becomes greater—thus a large part of the more than eighty compacts approved by Congress are fairly recent.² The earlier compacts dealt with such matters as boundary disputes, jurisdiction over rivers and harbors, and criminal jurisdiction; the more recent ones have had to do with the use of river water and electric power generated from such water, oil production, fishing in a river or lake, and large-scale pollution.³ Some of the most important recent compacts have related to commercial fishing on the Great Lakes by the states abutting thereon; pollution control of the Ohio River Valley; flood control; oil production; minimum wages; the use of the waters of the Colorado River and the construction of Boulder Dam; Atlantic states marine fisheries; and interstate supervision of parolees and probationers.⁴

The problem of interstate relations has become so complex and so recurring that there has been a widespread movement to set up commissions on interstate cooperation. Several states, for example Kentucky,⁵ have made existing agencies of government responsible for such work, but the more common practice has been to create new agencies. These commissions on interstate cooperation represent their states on the Council of State Governments⁶ and also undertake to conduct direct negotiations with other

Commissions on Interstate Cooperation

¹ See W. Brooke Graves, *American State Government*, D. C. Heath and Company, Boston, 1936, pp. 650-651. Sixty-two were brought to Congress and about twenty were not.

² See *State Government*, Vol. IX, pp. 118-121, May, 1936. Twenty-four compacts were authorized by Congress during the years 1934-1940. See *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, pp. 56ff.

³ Professor Graves classifies the sixty-two compacts accepted by Congress prior to 1932 as follows: twenty-three with boundary disputes, ten with jurisdiction over rivers, harbors, and boundary waters, five with criminal jurisdiction, and the remainder miscellaneous. See his *American State Government*, *op. cit.*, pp. 650-651.

⁴ For a complete list, see *Book of the States, 1941-1942*, pp. 56ff. The crime compact has been ratified by thirty-one states, while others have not as yet been ratified by a single state.

⁵ The legislative council has been given this responsibility in Kentucky.

⁶ A part of the Public Administration Clearing House in Chicago, which is supported jointly by the state governments and the Rockefeller Foundation.

states. As members of the Council of State Governments they work toward better relations and closer harmony among their states and serve as a clearinghouse of what is being done in regard to current problems, such as national defense. As negotiating agents they represent their states during the drafting of a compact; they also attempt to iron out less important and permanent difficulties with neighboring states.

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CHAPTER IV

THE CONSTITUTIONAL SYSTEM

THE term "Constitution" of the United States has been so loosely used by writers and speakers that it has anything but an exact meaning in the minds of the rank and file of American citizens. To the majority of people the term probably is synonymous with the document which was drafted by the convention which met in Philadelphia in 1787. Others would add to that brief but remarkable state paper the twenty-one formal amendments which have been adopted during the subsequent 150 years. Of course the contribution of the little group of men who assembled in 1787 should not be minimized; nor can the formal amendments be disregarded. Nevertheless, a student who is familiar with these alone would have at best a fragmentary knowledge of the present government of the United States. Actually the constitutional system includes a great deal more than the document of 1787 and its amendments. It is highly important to add the numerous interpretations which the Supreme Court has from time to time made of the original provisions. Then, too, there are the many laws which Congress has enacted to amplify and carry into effect the various grants of the Constitution of 1787. Finally, one cannot forget the multitude of customs and conventions relating to the governmental system which have grown up through the years and which enter frequently and substantially into the actual conduct of government in the United States. To summarize, it may be stated that the American constitutional system of today is made up of: (1) the Constitution of 1787, (2) the twenty-one amendments which have been added to it, (3) the interpretations which the Supreme Court has handed down relating to these first two items, (4) laws which have been passed by Congress to carry the provisions of the original Constitution and formal amendments into effect, and (5) the customs and usages which have grown up around and about the governmental institutions of the United States. These five elements of the constitutional system under which the United States operates are of sufficient importance to justify a somewhat detailed examination.

THE CONSTITUTION OF 1787

The government set up under the Articles of Confederation adopted after the Declaration of Independence from England proved distinctly inadequate. There was such conflict among the state governments that great confusion resulted, especially in the field of commerce. The authority conferred on the central government by the Articles was so slight that the Confederation found itself helpless to correct the situation. Moreover, with no power to levy taxes, this government was constantly faced with embarrassing and even paralyzing financial problems. This intolerable impotence, coupled with a severe economic depression, led to the calling of a convention which assembled in Philadelphia in 1787.¹

The Articles of Confederation

The delegates who were selected by the several states to represent them in Philadelphia were instructed to revise the Articles of Confederation in such a fashion that the worst defects would be corrected. However, they were not authorized to draft a new constitution nor to make any extensive additions to the power of the central government. Nevertheless, the delegates concluding that a mere revision would be futile, proceeded behind closed doors to formulate the provisions of a new constitution. There was a wide gap between the views of the representatives of the large states and those of the small states; consequently debate reached a high pitch which at times seemed to point inevitably to hopeless deadlock. However, George Washington, with his abundance of common sense and notable prestige, occupied the presiding officer's chair and successfully steered the convention through the perils of disagreement. Benjamin Franklin, so aged that he had to be helped from his seat and so infirm that he could scarcely speak above a whisper, was there to lend his moderating influence when the views of James Madison clashed with those of Alexander Hamilton or the large-state delegates urged more than the small-state delegates could possibly accept.

The Convention of 1787

It is not surprising, considering the divergent attitudes of the framers, that the Constitution of 1787 has often been referred to as an excellent example of compromise. It was impossible for any group to write its own unmodified ideas into the Constitution, although the influence of certain leaders, such as

The Role of Compromise

¹ For contemporary letters of men such as Madison and Washington describing the situation, see Charles Warren, *Making of the Constitution*, Little, Brown & Company, Boston, 1937.

James Madison, was considerable. While at the time no one was particularly enthusiastic about the results because of the large amount of compromise that entered in, it is now possible to see that this very attribute has contributed in no small degree to the success of the document. Alexander Hamilton and others might have produced a more brilliant and consistent constitution had they been given a free hand, but those who disagreed with such political and economic views would have bitterly opposed such a constitution in operation. It is obvious that such a constitution would have gone the way of those ill-fated constitutions that have promised so much and existed so briefly. In the case of the constitution drafted in Philadelphia in 1787 there was little spectacular enthusiasm, it is true. But there was also not the crystallized opposition that would have meant the difference between adoption and rejection or the difference between short-time use and operation over a period of more than a century and a half.

In contrast to many modern constitutions, the Constitution of 1787 is quite general rather than detailed in its provisions; indeed, it is distinctly shorter than most of the state constitutions in the United States. At the time of its framing there were those who were disappointed that more specific items were not included, but it is now apparent that this characteristic has contributed to the long acceptance. Details would have been shortly outmoded, with the result that frequent revisions would have been required or an entirely new constitution would shortly have been in order.

The delegates who participated in the Philadelphia convention were drawn from the well-to-do, the educated, the socially elite, and the professional classes—the absence of those who could speak for the laborers, the small shopkeepers, and the humble farmers strikes a present-day student as very noticeable. After examining the landholdings, the insurance and bank stocks, and the records of public securities of the delegates, Charles A. Beard concluded that the Constitution of 1787 reflected the economic interests of those framers and their fellows.¹ It is apparent that the framers did inject some of their own views into the various articles. For example, the governmental system to be created under the aegis of the new constitution was not to embody what are today considered the ordinary

¹ See Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*, rev. ed., The Macmillan Company, New York, 1935. For a discussion of the opposing point of view, see Charles Warren, *Making of the Constitution*, Little, Brown & Company, Boston, 1937, Chap. 2.

principles of democracy—the President was to be chosen by an electoral college rather than by direct vote of the citizens, the franchise was by no means universal, while Senators were to receive their seats from state legislators, not from the voters. Nevertheless, if the framers were influenced to some extent by the economic interests which they and their friends held, they were wise enough to exercise restraint in the extent to which they carried the safeguarding of their own properties and wealth. Considering the time as well as other constitutions of the period, the Constitution of 1787 may be regarded as reasonably liberal.

Finally, it may be noted that the Constitution of 1787 is carefully organized and ably written. Very few public documents of this or any other period of history equal it in clarity, well-chosen phraseology, and orderliness. Fortunately, the Philadelphia convention had some sticklers for good form in writing as well as some members, such as Gouverneur Morris, who could be depended upon to execute a careful revision after the rough draft had been agreed upon.

Fine
Phrase-
ology

Although the Articles of Confederation specified the unanimous consent of the states to any changes in the governmental system, the framers, realizing that such a condition was unreasonably hard to attain and would require a considerable time, substituted a provision calling for the approval of a minimum of nine states. Even with this reduction in onerousness the ratification was an uncertain affair; the difficulty was not so much the obtaining of the requisite number as securing the acceptance of pivotal states, such as New York. Congress displayed slight enthusiasm for the proposed Constitution and submitted the document to the states on September 28, 1787 without indicating whether it favored approval or rejection. The reception on the part of the people was varied, but there was a more vociferous chorus of criticism than of praise. Some feared that too much power was being lodged in the central government; others would have added to the grant of authority. The large states were not sure that their rights had been sufficiently recognized in comparison with their smaller sisters. The common people felt that the new Constitution was not sufficiently democratic and especially criticized the lack of a bill of rights.

Ratification

Nevertheless, three states ratified before the year was out,¹ and by

¹ Delaware ratified first on December 7, 1787, Pennsylvania followed on December 12, and New Jersey joined this group on December 18.

June of 1788 the requisite nine states had given their approval. But New York was still uncertain and its inclusion was considered essential to the success of the new government. Perhaps the tide in New York was safely turned by the publication at the rate of about three every week of the eighty-five *Federalist Papers* written by Hamilton, Jay, and Madison under the pseudonym of "Publius." The papers were written in a style so forceful and clear that the readers of the newspapers in which they appeared must have been influenced in favor of the ratification. Moreover, the impressive spectacle of men of such diverse opinions as Alexander Hamilton and James Madison joining together to urge the ratification undoubtedly served to convince some of those who were doubtful. At any rate, New York finally ratified on July 26, 1788, although with only three votes to spare. The new government provided for in the Constitution began to function in 1789.

The Constitution of 1787 consists of a preamble and seven rather brief articles. Article I, divided into ten sections, is approximately as lengthy as the remainder of the articles combined and deals with the legislative branch of the government, providing for its structure, its power, and its limitations. Article II, subdivided into four sections, relates to the executive branch of the government and is devoted largely to the presidency. Article III, with three sections, provides for the judicial branch of the government but leaves to the discretion of Congress the exact nature of the court system beyond specifying that there shall be one Supreme Court. Article IV, having four sections, lays down a small number of requirements in regard to interstate relations and the relations between the central government and the states, including the creation of new states. Article V, a single paragraph, outlines the process of formally amending the Constitution, while Article VI, also consisting of but a single section, makes the Constitution, laws passed in pursuance thereof, and treaties made under the authority of the United States the supreme law of the land.¹ Article VII runs to but one sentence of two printed lines and has to do with the ratification of the Constitution.

FORMAL AMENDMENTS

The formal process of amending the Constitution of 1787 is provided for in detail in that document itself. There are two stages:

¹ Debts incurred by the Confederation are guaranteed by this Article.

**The New
York Sit-
uation**

**Contents of
the Consti-
tution of
1787**

proposal and ratification, both of which may be handled in two ways. Amendments may be proposed by the two houses of Congress if two-thirds of the members voting thereon are favorable (a quorum must, of course, be present). The Supreme Court has held that the amendment process is distinct from that of ordinary legislation and hence that the signature of the President is not required.¹ All amendments thus far submitted for ratification have been proposed by this method. However, the Constitution declares that Congress shall call a special convention for proposing amendments if the legislatures of two-thirds of the states request. After amendments have been proposed, they are submitted for ratification to the states via the office of the Secretary of State and the several state governors. Ordinarily they go to the legislatures in the states, but an alternative is to submit them to state conventions. When the legislatures or conventions of three-fourths of the states have ratified and when their governors have notified the Secretary of State, the amendment is proclaimed in effect. The vote in the state legislatures or state conventions is by simple majority. It may be added that all of the amendments, with the single exception of the Twenty-first, were ratified by state legislatures. In the case of the Twenty-first Amendment Congress decided that a more accurate expression of popular opinion might be secured through state conventions and consequently made such a stipulation.

**The
Amending
Process**

There are many who feel that the process of formal amendment is too difficult. They point to the inconsistency of majority rule with the provisions requiring two-thirds approval of Congress together with the ratification of three-fourths of the states. They are especially alarmed at the considerable amount of time which ordinarily is required to complete the process. Furthermore, they point to the extremely high mortality rate in the case of proposals to amend: out of approximately three thousand joint resolutions introduced in Congress since 1789 calling for amendment proposals only 26 have been adopted.² Of these, twenty-one have, of course, been ratified by the necessary number of states and become effective. Certainly the chances of getting an amendment accepted by

**Criticisms
of the
Amending
Process**

¹ See *Hollingsworth et al. v. Virginia*, 3 Dallas 378 (1798).

² See M. A. Musmanno, "Proposed Amendments to the Constitution," *United States Senate Document* 93, 69th Congress, 1st Session, Government Printing Office, Washington, 1926; also J. Tanger, "Recent Proposals to Amend the Constitution of the United States," *Temple Law Quarterly*, November, 1936.

Congress and ratified by a sufficient number of states are not good, even considering that these figures include duplications and the hare-brained notions of crackpots.

Foreign observers of the government of the United States almost always comment on the complicated character of the amendment process and conclude that the American Constitution is perhaps the most rigid constitution in the world. If the formal process were the only means of changing the constitutional system of the United States, the situation would be serious indeed. With only ten amendments added since 1800, despite the revolutionary changes that have taken place in almost every phase of human endeavor, it might seem obvious to anyone that either the framers of 1787 were supermen who could foresee conditions indefinitely or that the country was forced to get along without highly desirable changes. Considerable credit for the fact that the latter is not true is due the framers for their restraint in not providing in a detailed manner for posterity; the general character of most of the original Constitution has made it possible to adapt it to the changing conditions of successive generations. However, even after this explanation has been noted, the number of amendments still seems very small.

Nevertheless, the actual situation is far less serious than it seems on its face. Many important changes in the constitutional system have been made by judicial decisions; others have been brought about by statute. A careful comparison of the British and American constitutional systems fails to reveal any great difference in amount of change. The British constitution may be formally amended with a modicum of red tape: a mere act of Parliament suffices. In the United States the formal process is burdensome, but other methods have grown up which are much less onerous. In some respects the English have gone farther and proceeded more rapidly than the United States: the regulation of business, social security perhaps, and the application of the merit principle to the public service. In other respects, such as the broadening of the suffrage, the United States has taken first place. Despite this, it is probably fair to state that the process of formal amendment in the United States is unnecessarily cumbersome. It has made it essential to develop certain roundabout methods which have been reasonably effective but which at the same time may have encouraged the growth

**Is the Con-
stitution
Rigid?**

**American
and British
Constitu-
tions Com-
pared**

of lack of respect for law, the prevalence of political manipulation, and kindred political evils.

The first ten amendments were added almost immediately after the new government got under way—to be exact in 1791. They have sometimes been regarded as a single amendment because they are primarily concerned with the rights of the people and because they were drafted as a body to meet the objections of those who were not satisfied with the work of the Philadelphia convention. Actually only the first eight deal with what would ordinarily be included in a bill of rights. The Ninth provided that “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” There was some feeling that the status of the states was not sufficiently safeguarded and hence the Tenth Amendment categorically stated that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

**The First
Ten
Amend-
ments**

One of the early cases ¹ decided by the Supreme Court laid down the rule that a state could be sued by citizens of another state. Much consternation grew out of this decision, for the states were inclined to view it as an intolerable restriction on their sovereign powers. The Eleventh Amendment, proclaimed effective in 1798, was drafted to correct this situation and states that “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.” It was apparent in the election of 1800 ² that the scheme for electing a President and Vice-President was not adapted to a system dominated by political parties.³ The Twelfth Amendment, which became a part of the Constitution in 1804, sought to remedy this lack by specifying that the President and Vice-President should be elected separately.

**Eleventh
and Twelfth
Amend-
ments**

¹ This was the case of *Chisholm v. Georgia*, 2 Dallas 419 (1796).

² In the election of 1800 both Jefferson and Burr received the same number of votes in the electoral college and consequently appeared to have equal claim to the presidency, although the electors had Jefferson in mind for President. By providing separate election of the President and Vice-President such an anomalous situation would be rendered impossible.

³ In fact, one writer states that the electoral college plan presupposed that Washington “was going to live practically forever.” See E. S. Corwin, *The President: Office and Powers*, New York University Press, New York, 1940, pp. 50-51.

The Thirteenth, Fourteenth, and Fifteenth Amendments are often referred to as the "Civil War Amendments" because they grew out of the conflict between the North and the South involving the status of Negroes. The first of these, proclaimed in effect in 1865, prohibits slavery and involuntary servitude. The Fourteenth Amendment, which dates almost three years later, sought to guarantee the privileges and immunities of citizenship to the Negroes. It contains two of the most controversial sections of the entire Constitution: "nor shall any State deprive any person of life, liberty, or property without due process of law" ¹ and "nor deny to any person within its jurisdiction equal protection of the laws." The first of these, although intended to protect Negroes, actually has been used primarily by corporations which have objected to state regulation. The second has come into considerable prominence during the last decade because of the very important series of cases decided by the Supreme Court dealing with equal educational opportunities, right to adequate counsel, Pullman accommodations, application of third-degree methods, and so forth.² In section 2 of the Fourteenth Amendment is one of the best examples of a part of the Constitution which has not been enforced although it has never been repealed. This declares that representation in the lower house of Congress shall be reduced in those states which deprive adult male citizens of their suffrage.³ Likewise, the Fifteenth Amendment is another instance of a constitutional requirement which has been frequently ignored; it states that neither the United States nor a state shall deny the voting privilege on "account of race, color, or previous condition of servitude."

Many students of the American constitutional system believe that the Sixteenth Amendment should never have been made necessary.⁴

This amendment authorizes Congress to levy income taxes irrespective of the source of the income and without apportionment among the states. In the Springer case,⁵ which dates from the 1870's, the Supreme Court upheld an income-tax law enacted by Congress, but in the *Pollock v. Farmers Loan and Trust*

¹ Approximately 40 per cent of the recent cases of the Supreme Court involve this clause.

² See *Powell v. Alabama*, 287 U. S. 45 (1932), and the series of so-called "Justice Black cases"—*Smith v. Texas*, 311 U. S. 128 (1940); *Chambers v. Florida*, 309 U. S. 227 (1940); *Pierre v. Louisiana*, 306 U. S. 354 (1939).

³ If enforced, southern states would have serious reductions in their Congressional seats.

⁴ In *Helvering v. Gerhardt*, 304 U. S. 405 (1938), Justice Stone inclines toward this view.

⁵ *Springer v. U. S.*, 102 U. S. 586 (1880).

Company case (1895) it threw out a similar law on the ground that an income tax is a direct tax which must be apportioned among the states on the basis of population.¹ The Sixteenth Amendment was added in 1913 to remove any doubt as to the authority of Congress in this exercise of power.

The rising tide of democracy beat upon the plan of indirect election of Senators and substituted in the Seventeenth Amendment, put into effect in 1913, their direct election by the voters. In that period this amendment was considered of far-reaching importance; promises were made that it would do away with the senatorial seats of political bosses, such as Matt Quay and Tom Platt, as well as with the unsavory connections which had been revealed by the "muckrakers" between certain Senators and "big business." However, the experience of more than a quarter of a century has indicated that direct election has probably not greatly changed senatorial character.²

Seven-
teenth
Amend-
ment

While there are several sections of the formal Constitution which, as has been pointed out, are not at present generally heeded or which have been modified by subsequent amendment, there is but one outstanding example of outright repeal. The Eighteenth Amendment was added in 1919 as the result of intensive effort on the part of the antiliquor forces over a period of years; it prohibited the "manufacture, sale, or transportation of intoxicating liquors." The Twenty-first Amendment, rushed through in record time in 1933, specifically repealed this prohibition.

Eighteenth
and
Twenty-
first
Amend-
ments

The Nineteenth and Twentieth Amendments, dating from 1920 and 1933 respectively, have been judged by many competent observers to be among the most important amendments. The first removed the suffrage discrimination against women and in one fell swoop virtually doubled the number of qualified voters in the United States. The second, known as the "Lame Duck Amendment," advanced from March 4 to January 20 the beginning of a presidential term of office. More important than that, it had the effect of reducing the period between election

Nineteenth
and Twen-
tieth
Amend-
ments

¹ This case is reported in 158 U. S. 601 (1895). Using the doctrine that a tax on income is indistinguishable from a tax on the source of income, the Supreme Court decided that a tax levied on income derived from land and public securities was a direct tax.

² Former Senator James E. Watson believes that the quality has been reduced by direct election. See his *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

and actual exercise of lawmaking functions in the case of Senators and Representatives from thirteen to approximately two months.

In summary, it may be pointed out that the twenty-one amendments have not made any radical changes in either the structure or powers of the government of the United States. The addition of a bill of rights is generally regarded as very wise, although in the last analysis personal and property rights probably depend more upon public opinion than upon constitutional provisions. The Eighteenth and Twenty-first Amendments more or less cancel out and hence are largely of historical interest at present. The remaining amendments are responsible for moderate and on the whole necessary changes. However, it is quite clear that the most important changes in the American system of government have not been brought about by formal amendments.

In some of the more recent proposals to amend, Congress has specified a time limit of seven years for ratification.¹ The Supreme

Recent Supreme Court Decisions Bearing on the Amendment Process Court in *Dillon v. Gloss*² (1921) considered such a stipulation and held it to be reasonable and within the power of Congress. Inasmuch as no such time limit was included in the text of the child-labor amendment proposed by Congress in 1924, the question has arisen as to whether that proposal, which has been ratified by some twenty-eight states, is still pending. In 1939, the Supreme Court was asked to rule on that question and after due deliberation decided that in the absence of a definite time limit a proposed amendment might be considered to be before the states for a reasonable period of time. The court refused to specify exactly how lengthy a period might be permitted, but was of the opinion that the child-labor amendment, proposed more than fifteen years earlier, still had life.³ In a Kentucky case the Supreme Court has decided that a state may ratify an amendment after having previously declined to take such an action.⁴ On the other hand, no state may withdraw a favorable action after the Secretary of State has been notified.⁵ In *Hawke v. Smith* (1920)⁶

¹ The Eighteenth, Twentieth, and Twenty-first to be exact.

² 256 U. S. 368 (1921).

³ See the case of *Coleman v. Miller*, 307 U. S. 433 (1939).

⁴ See *Chandler v. Wist*, 307 U. S. 474 (1939).

⁵ Congress decided that New Jersey, New York, Ohio, Oregon, and Tennessee having ratified amendments could not change their minds. See also *Coleman v. Miller*, 307 U. S. 433 (1939).

⁶ 253 U. S. 221 (1920).

the Supreme Court considered the Ohio constitutional amendment which permitted the voters to pass on a proposed amendment to the federal Constitution, thus controlling the action of the state legislature. It held that such a method was not contemplated by the Constitution and therefore could not be allowed. Advisory referenda, however, are a different matter and may be undertaken if they do not bind the legislature in its action.

JUDICIAL INTERPRETATION

Although the Supreme Court did not play an outstanding role during the first years of its operation, during the early years of the nineteenth century it began to essay a more vigorous *Marbury v. Madison*¹ part in the government. Before President Adams left office he sent to the Senate the name of John Marshall as Chief Justice of the Supreme Court, which nomination the Senate confirmed as one of its last acts before Thomas Jefferson and his administration took over the government. Since the Supreme Court was made up of men who were from the opposite political camp, Jefferson was not disposed to be friendly; indeed he made no bones of resenting the last-minute action of his predecessor in filling vacancies on the bench of the court. Hence when one of the Adams appointees to a minor justiceship of the peace applied to Jefferson's Secretary of State, James Madison, for his commission of office which had not been delivered, he received a very cold reception. Failing to obtain satisfaction from the new administration, Marbury, the appointee in question, appealed to the Supreme Court for assistance and, citing the Judiciary Act of 1789, asked for a writ of mandamus² ordering Mr. Madison to turn over the commission. It appeared that the Supreme Court would have no choice other than to grant the petition of Mr. Marbury, yet President Jefferson let it be known that in such an event the mandamus would be ignored. Much to the surprise of the President and the general public, the Supreme Court did not issue such a writ, although it noted that Mr. Marbury was entitled to the commission. In comparing the Judiciary Act of 1789, which provided for such jurisdiction on the part of the Supreme Court, with the Constitution itself, the judges found a conflict, for Article III of the Constitution gave the Supreme Court original jurisdiction in only two types of cases: those

¹ 1 Cranch 137 (1803).

² A writ of mandamus is a judicial order to an administrative officer to perform a specific act. It permits no discretion on the part of the officer, but commands obedience.

involving foreign diplomatic officials and those in which the states were parties. It was clear that the Marbury case did not belong to either of these categories and hence the Supreme Court declared null and void that section of the Judiciary Act which required it to take jurisdiction in such cases. Whether the judges were aware of what a far-reaching precedent they were establishing in making that decision or whether they were primarily concerned with saving their face in a most embarrassing conflict with Jefferson and his associates cannot be definitely determined. Perhaps both elements entered into their deliberations. At any rate the Marbury case has been considered the basis for the very important authority exercised by the Supreme Court in interpreting the provisions of the original Constitution, although it is only fair to point out that the doctrine of judicial supremacy was not firmly established until a considerable time after this case had been decided.¹

In lecturing at the Law School of Columbia University, Chief Justice Hughes, then governor of New York, made an observation which has been widely quoted. He said: "We are under the Constitution, but the Constitution is what the judges say it is."² Taken out of its context this sentence sounds somewhat more categorical than Mr. Hughes probably intended. Nevertheless, it does summarize in a few striking words a procedure which has been of tremendous importance in adding to the American constitutional system. Something like one thousand cases are brought to the Supreme Court every year. Many of these are relatively unimportant; in fact, the majority are not accepted by the Court for detailed consideration. However, during the course of the years the Supreme Court has received cases involving almost every conceivable aspect of the original Constitution and the formal amendments. In deciding these cases it is necessary for the Supreme Court to interpret the more or less general terms of the Constitution in a detailed and precise manner. In examining the clause which gives Congress the power to regulate interstate and foreign commerce, the Supreme Court has had to decide hundreds of points which are based on that clause. Thus, insurance policies of various sorts have been held again and again not to be included under it, while transportation

¹ It has sometimes been said that it required the Civil War to establish judicial supremacy as a vital part of the system of government in the United States.

² See Charles E. Hughes, *Addresses*, Harper & Brothers, New York, 1908, p. 139.

of goods and persons, including even stolen automobiles and white slaves, has been declared to be interstate commerce.¹ Taking the decisions relating to the commerce clause alone, one has a very extensive body of interpretations which constitute a substantial part of the constitutional system of the United States.

If "the Constitution is what the judges say it is," it might be supposed that it would be a very meretricious affair indeed. One group of judges would decide one way; another would follow a very different course; and the result would be confusion. If the successive benches of judges who have constituted the Supreme Court decided cases on the basis of whim, there would, of course, be chaos rather than a system. Actually, however, they are guided by the principle of precedent to a considerable degree. In other words, they are mindful of their responsibilities and in interpreting clauses of the Constitution give careful consideration to previous cases involving similar points. At times the Supreme Court has been subjected to severe criticism because it has relied on precedent, and it is probably fair to say that such a policy has at times made progress difficult. On the other hand, unless considerable attention were paid to past interpretations, the work of the court would be very haphazard indeed. It would be inaccurate to speak of a constitutional system in the absence of precedents, for there would be little or no relation between interpretations of yesterday, today, and tomorrow. In reality it is impossible to conceive of a situation in which reasonable attention would not be given to previous interpretations. Most of those who condemn the principle of precedent really do not want its abandonment but rather its modification—they would have the Supreme Court follow precedent less closely.

Perhaps the most important element of the American constitutional system which has been contributed by the Supreme Court is judicial interpretation itself. The framers discussed the matter of giving the courts authority to interpret the Constitution, but there was considerable difference of opinion among them. No vote was taken on the matter and no provision was inserted which conferred such power. Nevertheless, it has frequently been said that the most

The Principle of Precedent

Examples of Judicial Contributions to the Constitutional System

¹ On insurance the definitive case is *Paul v. Virginia*, 8 Wall. 168 (1869). On stolen automobiles, see *Brooks v. United States*, 267 U. S. 432 (1925). On white slaves, see *Hoke v. United States*, 227 U. S. 308 (1913).

significant characteristic of the governmental system of the United States is judicial supremacy, which grows out of the power of the Supreme Court to declare null and void acts of Congress or any other agency of government which it regards as conflicting with the terms of the Constitution. Hence, judicial supremacy itself may be regarded as an addition to the American constitutional system brought about not by formal provision or amendment, but by judicial interpretation. The scope of congressional powers is defined in such general terms in the formal Constitution that it is very difficult to gain a clear picture. By studying the numerous cases in which the Supreme Court has examined in some detail these Congressional powers, a much more satisfactory understanding may be obtained. The very position of the states in the governmental system of the United States depends in no small measure upon judicial interpretation. Of course, the vastly greater complexity of economic and social problems has in the last analysis dictated the changes in state-federal relationships, but it has been judicial interpretation which has said exactly to what extent such changes should be reflected in the constitutional system.

CONGRESSIONAL STATUTES

During the course of a single year Congress transacts an enormous amount of business in the form of statutes, joint resolutions, and other types of acts. By no means all of these have any constitutional significance; as a matter of fact only a comparatively small proportion have to do with such important matters as to be ranked in the constitutional system of the United States. The private bills, the appropriation measures, and the rank and file of statutes may call for the expenditure of large sums of money and affect the lives of millions of persons, but they are not of such a character as to contribute to the constitutional system. The relatively small number of statutes that do fall into this category are not distinguishable on their surface from the mass of ordinary legislation. They have the same general form and require only the ordinary majority of votes expected in the case of other acts. It is their contents that makes them important. How many statutes of this type have been enacted by Congress it is impossible to state, for no record is kept which separates these acts from ordinary acts. However, during the more than a century and a half of life of the republic the total number runs at least into the hundreds and probably into the thousands.

Inasmuch as the formal Constitution is very general in character, it is quite natural that Congress has had to enact many laws filling in the details. The Constitution in dealing with the judicial branch specifies a Supreme Court, but it leaves the creation of that court to Congress. Hence the composition, organization, rules, and appellate jurisdiction of the Supreme Court have been provided for by Congressional action. The other federal courts are left entirely to the discretion of Congress, with the result that the entire system of district, circuit, and special courts stem from such a source rather than from the Constitution. It may be seen, therefore, that the judicial aspect of the American constitutional system is as largely the result of statutes passed from time to time by Congress as of the Constitution itself. In this day and age the administrative side of government is receiving emphasis the world over. It is interesting to note that the Constitution has no article which deals with administration; indeed, it scarcely refers to such activities at all. All of the ten traditional administrative departments of the national government have been set up by statute. In addition, almost all of the independent establishments are the result of Congressional action. The civil service system, the budgetary setup, and the planning and reporting agencies are all at least generally provided for by statute, although in matters of detail they may depend upon executive orders. The foreign service of the United States, the Army, the Navy, and the Marine Corps are very largely based on the statutes which Congress has passed under the broad terms of the Constitution relating to diplomatic and military affairs. Large numbers of other statutes which have had a great deal to do with the structure and functions of American government might be cited, but it will suffice here to say that their total import is considerably beyond that of the formal amendments.

**Examples
of Statu-
tory
Change**

CUSTOMS AND USAGES

Every government is likely to develop certain ways of handling public affairs which are not mentioned in any constitutional article or even in an ordinary law. The Anglo-Saxon countries, relying as they do on common law which is based on custom and usage, perhaps give a place to more of these usages than other countries. The government of England is traditionally associated by observers with a rich background of customs, frequently quite colorful

**General
Character**

in character. Although the United States is comparatively youthful in terms of English history, a large number of similar usages have developed in its government. Some of these are so unimportant that they have little bearing on the constitutional system, but some of them enter intimately into it.

Every student of American government recognizes the influential role which political parties assume; it is scarcely possible to conceive of the federal, state, or local governments in the absence of political organizations. (Yet the Constitution makes no provision for political parties. The framers were wont to look upon such organizations with great suspicion and believed that they would ruin the young government if given any leeway. (There are a few laws which regulate party practices, but for the most part political parties have been the contribution of custom and usage.)

Another example involves the cabinet which advises the President. There is no basis for this in the Constitution, and while congressional statutes have set up the departments from which the cabinet members are drawn, there is no authority there for the cabinet itself. The first Presidents found it useful to have a small group of advisers to whom they could look for counsel. Other Presidents have continued the custom, until it would require great daring to dispense entirely with such a body. Some chief executives lean more heavily on the cabinet than others, but they all recognize it to some extent, although aside from custom and usage they might abolish it at any time.)

Custom and usage have had much to do with making the electoral college workable during these many years that political parties have nominated candidates for the presidency and vice-presidency. According to the arrangement in the Constitution, electors are given a free hand in electing a President; yet it is a commonplace that electors are at present mere figureheads who cast their votes for the nominee of the political party which honored them. This revolutionary change has been accomplished without a formal amendment and is a clear indication that custom and usage may not only function in the absence of constitutional stipulation but may even operate to modify in a far-reaching manner a formal provision of the Constitution.

Still another illustration of the contribution of custom and usage involves the making of federal appointments. The framers decided to confer such a responsibility primarily upon the President, though they checked this power to some extent by requiring senatorial confirma-

tion. The number of such positions has grown so large and the duties of the President have become so complicated that it is quite impossible for the President to take the initiative in the majority of cases. Through the years it has become the custom for the Senators and even Representatives to recommend persons to the President, with the result that the executive offices have become to some extent merely an avenue along which appointments pass from their inception to their confirmation. This usage has achieved such strength that it has resulted in what is known as "senatorial courtesy"—unless the President consults the Senator from the state where the appointment is to be made the Senate will refuse its confirmation.

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SECTION II

BASES OF THE COMMONWEALTH

CHAPTER V

CITIZENSHIP

ALL modern governments make a distinction between citizens and aliens; in the case of the United States there is both more and less difference between citizens and noncitizens than in most other countries. The fact that aliens are treated with more than ordinary consideration, at least by our laws,¹ that they are given the full protection of those laws, that they may usually hold property and engage in business enterprise without discrimination, means that the actual day-to-day status of aliens is not so very different from that of citizens.² On the other hand, the very nature of our political system makes citizenship tremendously important. In a totalitarian government in which the dictator decides what shall be done and proceeds to carry his decisions into effect, the role of citizens is scarcely different from that of other residents. In every case it is expected that obedience will be the rule, that financial support will be given, and that every man will do the minute task assigned to him. Under the American system the very success of the political process depends in very large measure upon the citizens. It is they who elect the public officials; it is they who express themselves directly or indirectly upon current issues; it is they who formulate certain standards which will either make for superior government or tolerate the most vicious of machine practices. Aliens, too, have responsibilities in the United States. If they are hostile they may engage in subversive activities that are aimed at undermining the foundations of the American system. The crime rate, the literacy record, and the financial solvency of the various governmental units in the United States may be affected in no small measure by the behavior of the alien population. But the alien role is largely passive and negative, whereas the role of citizens must be active and positive

Nature of
Citizenship
in the
United
States

¹ The attitude of our laws must in some cases be distinguished from the attitude of the population. The laws with few exceptions treat aliens as almost on the same plane as citizens; popular treatment may be, and sometimes is, far less courteous.

² This is the case during normal times; during wartime enemy aliens, of course, may be in a very different category. National laws in force in 1942 did not permit any aliens to be employed in specified defense industries.

if government in the United States is to achieve standards of efficiency, honesty, and progressiveness.

Considering the unusual importance of citizenship in the United States, it might be expected that the forefathers would have given careful attention to its definition. Strangely enough, the men who drafted the original Constitution apparently did not regard it as part of their duty to provide that definition or indeed even to specify exactly who were citizens, although they used the term seven times. Reading the original Constitution, however, one does get the impression that the framers had more than one citizenship in mind, for they refer both to citizens of the United States and to citizens of states. It was not until the Fourteenth Amendment was added that any authoritative definition was made and even it was in general terms and brief form. By this amendment, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."¹ It will be noted that two types of citizenship are specified: national and state. And still today there persists this dual citizenship in the United States, despite the fact that the former is far more important than the latter. State citizenship follows national citizenship automatically after a residence of from six months to two years, depending upon the state, has been established. While voting, office-holding, and jury service depend upon state citizenship, still it is currently held in far less esteem than was the case a century or more ago, when it was commonplace for Americans to think first of their relation to Virginia or Massachusetts and only secondarily of their relation to the whole country. Of course, there may still be some who are so sentimentally attached to the states in which they were born and in which they have always lived that for them the state comes first, but in the vast majority of cases it is national citizenship which is thought of when the term is mentioned. As a matter of fact, national citizenship is the only type which is recognized at all outside of the United States, for international law gives no weight to state citizenship.

THE ACQUISITION OF CITIZENSHIP

Out of approximately 132,000,000 people who resided in the continental United States when the census of 1940 was taken, something

¹ This is to be found in section 1 of the Fourteenth Amendment.

like 127,000,000 were citizens. This included babes in arms, the youth of the country, the middle-aged, and the elderly—all of whom, regardless of age, are equally citizens of the United States. These teeming millions of people of varied racial backgrounds, different economic status, and diverse social classes obtained their citizenship in one of three ways: (1) birth in the United States subject to the jurisdiction thereof, (2) birth to American citizens residing abroad, and (3) through the process of naturalization. The great majority of these 127,000,000 came into possession of a heritage, envied by countless millions condemned to be inhabitants of tyrant-ridden or backward countries, largely as a fortune of birth.

By far the most common method of obtaining American citizenship is that which involves birth in the United States. Now that the streams of migrants from Europe are no longer pouring into the country, the American-born section of the populace is making rapid strides toward exclusive occupancy. It may be noted that the Fourteenth Amendment specifies not only birth in the United States but birth subject to the jurisdiction of our government. This is of no practical numerical importance, but it was inserted lest there be a conflict with international law which exempts children born to diplomats stationed abroad from citizenship in the country of birth. With this minor exception, all of those born within the continental United States are citizens:¹ it does not matter whether their parents could ever qualify or not. Thus even American-born children of Orientals who are themselves excluded from citizenship are just as much citizens as those whose ancestors came over on the Mayflower. Birth in a territory of the United States, however, may or may not carry with it United States citizenship—at least as far as our own laws are concerned; under international law no distinction is made between territorial and full citizenship. If territories have been incorporated or if Congress has provided by treaty or law that their inhabitants shall be entitled to the privilege, then citizenship does accompany birth. However, in other territories American citizenship is not acquired by birth—before the establishment of the Philippine Commonwealth, Filipinos were nationals of the United States and citizens of the Philippines, but not citizens of the United States.

¹ Prior to 1924 Indians also constituted an exception to the general rule if they were members of tribes and born on Indian reservations. In that year Congress passed an act which conferred citizenship on the third of the Indian population which lacked such status.

During normal times fairly large numbers of American citizens reside in China, Argentina, France, Italy, and other countries for business purposes, for pleasure, for education, or missionary endeavor. Although these citizens may spend most of their mature years outside of the United States, they are not willing to surrender their citizenship; indeed, some of them conduct their lives more strictly in conformity with American customs than do those at home. If children are born to these expatriates, the laws of the United States permit them to hold the citizenship of their parents. It is customary to register such births at the nearest consulate of the United States at once, although formal notification of intention to retain American citizenship is not required until the age of eighteen has been reached. Then at twenty-one the oath of allegiance must be taken. Persons in this class remain citizens throughout their lives, even if they do not ever live in this country, but they cannot transmit citizenship to their children unless they spend some time here.

This method of acquiring citizenship conflicts, however, with the laws of some foreign countries and causes trouble at times. For example, Argentina claims as citizens all persons who are born within her boundaries, regardless of foreign parentage, and will permit them, even if they are minors, to leave Argentina only on an Argentinian passport. Therefore when citizens of the United States who represent business firms in Buenos Aires return to their American home for a visit, they find it necessary to take out Argentinian passports for their small children born abroad.¹ The conflict between *ius sanguinis* (the law which bases citizenship on parentage) and *ius soli* (the law which bases citizenship on place of birth) also causes difficulty in the cases of southern Europeans who migrate to the United States. Some of their mother countries will not recognize the acquisition of another citizenship. France, for example, has followed the *ius sanguinis* even to the third generation. This means that she can legally claim as her own a person born in the United States whose father was born in the United States of a French father, despite the fact that neither of the two native Americans ever resided in France. Ordinarily this strange state of affairs causes no complications, unless an American citizen with a French grandfather visits France and is investigated by the police, in which case he may

¹ While in general the United States follows the same rule as Argentina, still in cases of foreign parentage we allow a choice to be made.

be lodged in prison for failure to undergo military training and so forth.¹

The third method of obtaining citizenship in the United States is that of naturalization. In the days when the United States was expanding her territorial possessions and particularly during those years when hundreds of thousands of Europeans came annually to take up permanent American residence, naturalization was responsible for the addition of numerous citizens. Even during recent years, especially during World War II, naturalization has been reasonably important as a means of transferring the citizenship of those born in foreign countries. There are three types of naturalization: (1) by judicial process, (2) by treaty, and (3) by congressional statute. The first of these so much transcends the other two in importance that the term "naturalization" commonly implies only the former method. Nevertheless, the second and third deserve a brief explanation.

**Citizenship
through
Naturaliza-
tion**

In acquiring territory which has been held by a foreign country it is customary to draw up a treaty specifying the exact terms of the transfer. Such a treaty may contain a clause that confers American citizenship on the inhabitants of the territory or, on the other hand, it may make no reference to that matter. If such a provision is made, however, it has the effect of bringing the entire population of the new territory *en masse* into possession of United States citizenship. The treaty which the United States made with Russia after the purchase of Alaska may be cited as an example of this form of naturalization. Inasmuch as no populated territory of any size has been acquired during recent years, naturalization by treaty is at present largely of historical interest.

**Naturaliza-
tion by
Treaty**

Occasionally Congress has naturalized fairly large numbers of persons by ordinary statute. After the successful conclusion of World War I, for example, a law was passed which provided that all aliens who had served in the military forces of the United States might claim citizenship if they liked. In those cases in which territories have been added without

**Naturaliza-
tion by
Congres-
sional Stat-
ute**

¹ It is only fair to state that such cases of imprisonment are unusual. Nevertheless, in the years following 1919, when large numbers of tourists from the United States visited France, there were some twenty cases of this sort. The American State Department would lodge a protest in such cases, but France would point to her laws which were quite definite on the subject. Ordinarily a compromise would be reached, under which France would maintain her legal position but would permit the man of two countries to escape prison and leave the country.

conferring citizenship on the inhabitants, it may later seem wise to Congress to grant citizenship. This can be accomplished by an ordinary statute, which has the effect of bringing all of the people involved into the citizen class without any action on their part. The residents of the Virgin Islands received citizenship in this manner in 1927.

In contrast to the group character of naturalization by treaty or by statutory action, naturalization by judicial process is an individual affair. That is to say that each case is handled on its own merits, involves its own application, and receives an individual certificate indicating that citizenship has been granted. Since it is a custom for judges to wait until a number of candidates have met all requirements before holding the ceremony in which the final papers are given, sometimes there is the impression that groups of fifty or more persons are made citizens at one fell swoop. However, this does not mean that the individual character of naturalization by judicial process has been abandoned, for actually the final step at the end of the process is largely formal.

As early as 1790, Congress enacted legislation relating to individual naturalization and placed the general jurisdiction in the matter under

the courts. When the population was very small and the policy was to recruit as many citizens as possible, the regulations covering the process were naturally not very strict. However, although many irregularities were noted and although there was some sentiment for greater safeguards,

the easy procedure was permitted to continue with minor changes long after that stage had been passed. The haphazard character of the process during the years prior to 1906 was sometimes almost incredible. Regularly, just before election, Tammany henchmen rounded up the loafers on the streets and in saloons, promising all the beer they could drink in return for their services during the day. Each member of these motley groups would be handed a ticket which Tammany had purchased for a very small sum from a benevolent court clerk and which entitled its holder to naturalization. All of the little army would then be marshalled before a friendly judge who would in a very few minutes muster them into citizenship, regardless of their literacy, ability to speak English, racial background, or anything else. The mockery of this process was such that some of those who were naturalized did not realize what had taken place so that there were cases of a single person going through the experience several times. The abuses

**Naturaliza-
tion by
Judicial
Process**

**Haphazard
Character
of Judicial
Naturaliza-
tion Prior
to 1906.**

became so flagrant that President Theodore Roosevelt finally appointed a commission to investigate the whole matter and to make recommendations for reform. This committee did its work well and fostered the act of 1906 which with amendments remains in effect today.

At present there are three stages which candidates for naturalization must pass through: (1) declaration of intention, (2) petition for citizenship, and (3) the granting of papers. These are supervised by the Bureau of Immigration and Naturalization which, though long in the Department of Labor, recently has been transferred to the Department of Justice. But they are directly administered by some 260 federal and 1700 state courts.¹

Steps in the
Naturaliza-
tion Proc-
ess

Those persons who are eligible for citizenship may go to a federal court or to a state court of record² under whose jurisdiction they live and declare their purpose of becoming citizens of the United States. They must be of "white or African descent" and at least eighteen years of age. No specific residence is required except that they must have lived in a place long enough to come under the jurisdiction of its courts—a matter of six months or a year. This first step really amounts to little more than a visit to the clerk of the court, filling out and signing papers, and paying a fee. Personal history is called for, along with a statement that the applicant intends to forswear allegiance to the foreign country of which he is a citizen—but the actual denouncing of such allegiance is not demanded until the oath of allegiance to the United States is taken during the final stage. Hence after this first step has been completed the applicant is somewhat of a "man without a country." But inasmuch as the United States treats citizens and aliens with more or less equal consideration, this condition will not bother him unduly. As long as he remains here, he will ordinarily encounter no difficulty, although his legal status is somewhat uncertain. However, if he decides to go abroad, he may find that he is in an embarrassing situation. He cannot, of course, claim an American passport, nor may the obligation of his mother country be relied upon if it is known that he intends to renounce his allegiance to that country. The United States warns these people that they travel outside of her confines at their own risk; nevertheless, on occasions when they have become enmeshed in trouble she has sought

Declara-
tion of In-
tention

¹ Naturalization certificates have recently been granted as follows: 1939, 188,813; 1938, 162,078; 1936, 141,215.

² All state courts above the lowest grade are courts of record. In justice of the peace courts there is usually no clerk and no detailed record.

to assist them, even to the extent of sending vessels of war.¹ For the citizens of some countries traveling while they are in that in-between state is less serious than it is for others. For example, Germany encourages her nationals to take out citizenship in the countries where they reside for business reasons and does not admit that such a step cancels German citizenship, even in those cases in which they take a positive oath forswearing that relationship. The German policy presumes that it is to the advantage of her citizens residing more or less permanently abroad to participate in the affairs of their adopted countries; they can even serve the fatherland best in that way.

After at least two but not more than seven years have elapsed since the first step and provided the applicant can show five years of continuous residence in the United States, the second step is in order. The candidate must betake himself to a court designated for the purpose by the federal Bureau of Immigration and Naturalization—any federal district or circuit court of appeals is always approved and certain state courts may be accepted; in many cases this court is the same one to which he went in declaring his intention. As in the first stage, he goes to the clerk of the court rather than to the judge and again he furnishes certain information on blanks which are provided. He has to show that he has had five years of residence, that he is not a polygamist or an anarchist, that he is self-supporting, and that he expects to remain permanently in the United States. It is contrary to the policy of the United States to grant citizenship to those who desire to reside abroad and even after citizenship is granted it may be canceled if that is undertaken. The candidate must also furnish affidavits from two citizens of the United States who are in a position to offer testimony in regard to his length of residence and moral character. Also, another fee must be paid.²

At the conclusion of the second step the agents of the Bureau of Immigration and Naturalization conduct more or less searching investigations into the record and character of the applicant. At one time the staff of the Bureau was so inadequate that such inquiry frequently was purely routine, but during recent years there has been considerable stiffening of standards. The federal agents check on length of residence, moral character, political

**Petition
for Citizen-
ship**

**Granting
of Citizen-
ship**

¹ President Theodore Roosevelt did this in the case of two declarants who were held in the old Austria-Hungary.

² Fees have varied from time to time. Prior to 1934 they totaled some \$35, but they have since been reduced considerably below that figure.

stability, and economic independence and report such findings to the court which has jurisdiction. After at least ninety days have elapsed since completion of the second step and provided a general election is not scheduled within thirty days, the final stage may be negotiated. Here for the first time the candidate appears before a judge in open court—usually along with a number of other applicants. At this time the representatives of the Bureau of Immigration and Naturalization may present evidence against the candidate and ask that citizenship be denied. If the report of this Bureau is not entirely favorable, the applicant must be accompanied by two citizens who are able to testify as to his qualifications. The judge exercises considerable discretion in conducting the hearing, for no set form is prescribed by law. If there is any question about the qualifications of the candidate, the judge will usually put a number of searching questions to the person involved; otherwise the hearing may be quite perfunctory.

Some judges like to stage quite a show in connection with the examination of candidates. They ask for the singing of the "Star Spangled Banner," require the flag salute, and deliver a stirring address of patriotic character. They may call for a recitation of the Declaration of Independence, Lincoln's Gettysburg Address, or some other well-known public document. Not infrequently questions which produce strange answers are asked involving the history of the United States. If the judge is satisfied with the results of the hearing, he orders the clerk of the court to furnish a certificate of citizenship or final papers to the applicant. If, on the other hand, the results are not satisfactory, the judge may deny the petition entirely or he may defer the granting of final papers. It may be that more definite evidence is desired on the matter of residence or political views; again the judge may admonish the applicant to refresh his memory or put in more time on studying the provisions of the Constitution or the contents of American history.¹

**Ceremonies
in Granting
Citizenship**

Despite the improvements brought about by the act of 1906 and by amendments which have been added to it from time to time, there is some disposition to regard the process of judicial naturalization as not entirely satisfactory. It is asserted that too much leeway is permitted judges in the final

**Defects in
the Natu-
ralization
Process**

¹ For a very useful compilation of laws relating to naturalization, see *Naturalization, Citizenship, and Expatriation Laws; Naturalization Regulations*, prepared by the Bureau of Immigration and Naturalization, Government Printing Office, Washington, 1934.

step; that some judges take the matter seriously while others give it only the most perfunctory attention; that all too often the public hearing becomes simply an occasion for histrionic display on the part of the judge; that the investigation is superficial and has little bearing on the capacity which the candidate actually has for American citizenship. In truth, there is considerable evidence to support these contentions. Some judges do attempt to exercise their duties with care, but political judges sometimes treat the process as more or less of a farce. Considering the importance of citizenship in the United States, it does not seem that enough is made of the occasion afforded by the granting of the final papers. Perhaps a formal ritual would be out of place, but the average court session at present is so lacking in impressiveness that newly made citizens frequently go away without the sense of loyalty and responsibility which they should have. Finally, insisting upon technicalities while at the same time ignoring principles is an unfortunate misplacement of emphasis. One wonders what difference it makes whether or not a candidate can quote verbatim the Declaration of Independence or the words of the national anthem. Certainly, far more significant is his understanding of the fundamentals of the American system of government. Yet it may well be doubted that the average examination ascertains with any reasonable accuracy how much the candidate can offer as a prospective American citizen.

A good example of the shortsighted, technical emphasis is to be found in such cases as those involving Rosika Schwimmer, the well-known advocate of world peace, and Professor MacIntosh, a professor of theology at Yale. Both were asked in their examinations whether they would be willing to "take up arms in defense of the United States." Rosika Schwimmer pointed to the fact that she was a woman, that she was well up in her fifties, and that she could scarcely conceive of herself as other than a liability in the armed forces, but stated that she would gladly serve in a Red Cross unit or an industrial plant during a period of national emergency. Professor MacIntosh, also well past the age of military effectiveness, found it impossible to say categorically that he would take up arms regardless of the occasion, although he had served as a chaplain in World War I. He declared, however, that he would vigorously "support and defend the Constitution and laws of the United States" in every possible way. In both cases the Supreme Court denied citizen-

ship, although by less than unanimous vote.¹ Considering the importance of loyalty to the American system of government in this day of world-wide attacks on democracy, there is some question whether we have been wise in stressing military service from elderly women and clergymen who would in no conceivable circumstances be called, while at the same time disregarding other more important matters. It may be right in most cases to insist upon a pledge to bear arms, but it seems far more important to require positive support of and loyalty to the American system of government. Yet the Schwimmers and MacIntoshes, unquestioned supporters of popular government, have been denied citizenship, while National Socialists, Fascists, and others who have no real love for our institutions and who even engage in "fifth column" activities have been admitted.

Unlike some countries which refuse to sanction the discard of one citizenship to acquire another,² the United States definitely permits such a course. No formal steps have to be taken to abandon citizenship in the United States, for the mere acceptance of citizenship in another country serves to sever relationship with the United States. If naturalized citizens commit a serious crime within a certain period after they have been granted citizenship, the Department of Justice has sometimes proceeded to have their naturalized status canceled. If naturalized citizens move permanently to a foreign country within five years after they have been naturalized, the Bureau of Immigration and Naturalization may ask the courts to declare the original grant invalid.³ The Nationality Act of 1940 provided that naturalized citizens may remain in a foreign country only for a specified time unless they enjoy special status.⁴

Marriage does not, of course, have any effect upon the citizenship of males in any country, but for women the general rule is that upon entering such a relationship they automatically assume the citizenship

¹ *United States v. Schwimmer*, 279 U. S. 644 (1929); and *United States v. MacIntosh*, 283 U. S. 605 (1931). See also J. H. Wigmore *et al.*, "United States vs. MacIntosh—A Symposium," *Illinois Law Review*, Vol. XXVI, pp. 375-396, December, 1931.

² France, Italy, and so forth, for example.

³ For a detailed treatment of loss of citizenship, see L. Gettys, *The Law of Citizenship in the United States*, University of Chicago Press, Chicago, 1934, Chap. 7.

⁴ A period of one year was provided as grace during which naturalized citizens could return to the United States without forfeiting their citizenship. In October, 1941, when this period came to an end, about five thousand naturalized citizens faced loss of citizenship. An amendment to the act of 1940 was passed to permit approximately three thousand of these, mainly wives and children of employees of American business concerns abroad, to retain their citizenship.

of their husbands. This is the uniform practice in almost every country at present, despite vigorous campaigning carried on by certain feminist groups. However, in the United States the efforts of organized women began to bear fruit as early as 1922. Further ground was gained in 1930 and 1931, and a final victory was apparently won in 1934. After more than a century of identical citizenship for husband and wife large numbers of women in the United States began to feel that there was unfair discrimination in laws which made it necessary for them to follow their husbands' citizenship. Particularly in the case of American heiresses marrying foreign counts or scions of noble houses there was frequently a desire to retain their citizenship in the United States.

The first legislation passed in 1922 was a compromise which made such confusion that it was apparent to both proponents and opponents that either the concession must be withdrawn or extended. Under that law American women retained their citizenship after marriage to foreigners only by constant vigilance and with frequent embarrassment, especially if they resided outside of the United States. One American girl who married an English engineer stationed in China had experiences so varied that they were related in the *Atlantic Monthly*. To begin with, she had to go through three marriage ceremonies. Then she found that both the British and American consular officials displayed scant sympathy for such independence on the part of women, while the foreign communities in which she lived regarded her as peculiar. Every two years it was necessary for her to make a visit to the United States, unless she wished her citizenship to lapse, which meant great expense in time as well as money for one who had to journey from the Orient. Having a separate passport made out in her given name rather than as "Mrs.," she discovered that foreign officials and citizens found it difficult to comprehend that she was legally married. When foreign hotels posted her name among other guests on the bulletin board, as is the custom in some countries, they did so in such a way that fellow guests ostracized her socially. In the Soviet Union the immigration officials apparently concluded that her husband was a white slave agent who had kidnapped an American woman and after removing both from the train, jailed her husband until the British consular representatives could straighten the matter out.¹

¹ M. H. Porritt, "Woman without a Country," *Atlantic Monthly*, Vol. CXLIV, pp. 457-459, October, 1929.

Modifications in 1930 and 1931 ironed out the most unreasonable of these requirements, while the act of 1934 finally made both sexes equal in citizenship.

At the present time American women who marry foreigners usually find themselves in the confusing position of having two citizenships. The law of their husband's country claims them for its own, while the American law permits them to remain citizens of the United States. This leads to considerable trouble in settling estates, in arranging divorce settlements, and in other cases involving property because there is almost bound to be a conflict between the laws of the foreign country and those of the United States. Foreign women marrying American men have even greater worries than American women in the converse situation, for they are literally without a country; their native land no longer claims them nor does the United States. Their wisest course is to proceed with naturalization, which, although shortened in their cases, still requires some delay.¹

**Problem of
Dual Citi-
zenship and
Stateless-
ness**

NONCITIZENS

Perhaps no modern country has profited more than the United States from the migrations of aliens. At times it has been popular to blame these noncitizens for our high crime rate, our political corruption, and other unpleasant aspects of American life. There is, however, considerable doubt that these aspersions have been well founded;² on the other hand one cannot question the tremendous debt we owe to those who pulled up their stakes in foreign lands and settled permanently here. No one can visualize what would be the present weakness of the country if it had had to depend for its future only on the some four million inhabitants of 1789. Millions of immigrants have poured in—first from England, Germany, Ireland, and the Scandinavian countries and more recently from Italy and the southern and eastern European countries. Sometimes more than a million have entered our harbors within a single year.³ Many of these aliens have established themselves in Little

**Place of
Aliens in
the United
States**

¹ For a general discussion of marriage and citizenship, see S. P. Breckinridge, *Marriage and the Civil Rights of Women*, University of Chicago Press, Chicago, 1931; and L. B. Orfield, "The Citizenship Act of 1934," *University of Chicago Law Review*, Vol. II, pp. 99-118, December, 1934.

² The studies of the Wickersham Commission, published in 1931, revealed that the alien is not responsible for more than his share of the crime.

³ In 1913 alone, some 1,200,000 immigrants arrived.

Italies, Little Polands, and Little Russias in the congested areas of large cities, where they have maintained their foreign psychology and their native culture. However, a very large majority have amalgamated with the general population to the point of becoming an integral part of it. Ordinarily the latter have gone through the naturalization process and taken their places as citizens of the country.

After long discussion it was finally decided that it would be desirable to require aliens in the United States to register and several months were designated for this purpose in 1940. All post offices furnished the registration forms and accepted the completed documents, while committees of public-spirited citizens advised aliens in answering the questions. Deducing from a 1938 estimate of 4,300,000 aliens, it was expected in 1940 that approximately 4,000,000 would register. Surprisingly enough the census estimation was all out of line on this point, for over five million aliens eventually registered.

Although during the early years of the republic any and all immigrants were welcomed, it became apparent during the nineteenth century that some of those who elected to come were scarcely assets to the country. There was fairly widespread discussion of the desirability of placing certain limitations on immigration, but counteracting forces that desired cheap labor, a market for poor lands, and easily influenced votes were able to stave off action for many years.¹ It was not until 1882 that Congress passed the first series of acts which excluded paupers, insane persons, and other extreme categories of undesirables. Also it excluded Chinese who, although they do not deserve to be classed with the above groups, still were causing considerable animosity on the Pacific coast. Other limitations were added from time to time, until by the beginning of World War I the list of disqualifications exceeded thirty, of which the last added was that of illiteracy in the case of those over sixteen years old. Nevertheless, the tide of migration remained high, reaching an all-time record in 1913. The war, of course, made it impossible for immigrants to leave Europe, but at its conclusion there was abundant evidence of a prospective mass movement to the United States. Since economic conditions were none too good, since the crime rate was the highest in the world, and since there were other vexing problems which

¹ As early as the 'fifties the American or "Know-Nothing" party gained considerable support by advocating restriction of immigration. It was particularly opposed to the Irish who had settled largely in the cities of the eastern seaboard, and therefore it had its greatest strength among the "old American" residents of those cities.

might be complicated by the influx of additional millions of foreigners, public sentiment demanded drastic curtailment of immigration.

Two experimental acts were passed by Congress in 1921 and 1924, but neither proved entirely satisfactory. The first set up a quota which permitted 3 per cent of the number of foreign-born already here in 1920 to enter each year. It made no provision, however, for granting entrance permits before the migrants left home. Consequently there was a grand rush to get to the various United States ports before the quotas were exhausted. Several ships would leave Europe about the same time, but only the ones arriving first could land their passengers; the rest had to carry them back to Europe. This obviously worked a great hardship on those unfortunates who tore up their roots at home, who paid out hard-earned money for transportation, and who yet were not admitted to the "promised land." Moreover, since the system provided that the 1920 ratios of the nationalities of foreign-born resident in the United States be the basis for determining the number admitted from each country, it favored the southern Europeans who had formed the heaviest streams of recent immigration. Yet many supporters of the act regarded the northern European countries as a far more desirable source. The act of 1924 took cognizance of these defects by setting up a plan which allowed American consuls to examine prospective immigrants in the countries where they were stationed and to grant permits that would, except in rare cases,¹ guarantee admission to the United States. It also reduced the quota from 3 to 2 per cent each year and substituted the census of 1890 for that of 1920. Since most of the southern European immigration came after the turn of the century, more of the supposedly desirable northern European racial stock was thus admitted.

Realizing that the problem of immigration was in need of serious study, Congress made provision for a study which was used as a basis for the National Origins Act, which became effective on July 1, 1929, and continues to regulate immigration today. This act applies only to European immigration, however, since Asiatics are excluded except for relatively short visits and residents of the Western Hemisphere are permitted to come in as long as they meet health and financial qualifications. It prescribed a maximum of 154,-

¹ Diseases suffered after examination might result in rejection at Ellis Island, but the number of such rejections was almost negligible—about five per thousand.

ooo as a quota for each year and divided that quota among the various European countries on the basis of the number of people of such origin either by birth or by descent in the United States in 1920. Thus England and North Ireland received an annual quota of slightly over 65,000, Germany about 17,000, Eire some 18,000, Italy approximately 6,000, and so forth; no country received a quota of less than 100.¹ Because the great depression paralyzed the country at about the time the new act became effective, there was for several years little need for such a law. In general, economic conditions were worse in the United States than in other countries; hence fairly large numbers of people left our shores for their former homes. Only a very few of those exceptional ones who desired to come could meet the high financial standards which were set up by executive order. Actually for a year or so during the depth of the depression more people were leaving the United States than were entering. Even in the comparatively prosperous year ending June 30, 1937, the small total of 50,244 immigrants arrived, of which number only 27,762 were from quota countries.²

The rise of the dictators in Europe, however, added to the attractiveness of the United States as a place of residence and large numbers of German Jews, Poles, Austrians, and others sought to be admitted. In the case of Germany the demand was several times the annual quota, so that many people made application for consideration several years in the future. Such persons were required to have sufficient means that they would not become public charges after arrival in the United States. Finally, in 1941 executive orders made entrance even more difficult by providing that visas could be granted to Europeans only after submitting applications to Washington and by excluding those who had near relatives in Germany and Italy. The reason given for the latter action was that the secret police of those countries could force the immigrants to carry on hostile and subversive activities by threatening to torture those relatives they left behind.

The regulation of immigration was for some years administered by a Bureau of Immigration in the Department of Labor. As immigration became a less pressing problem, Congress set up a joint bureau to handle both immigration and naturalization. Since this bureau has more in common with the Department of

**The Immi-
gration
Service**

¹ For a much more detailed discussion of recent immigration regulations, see L. G. Brown, *Immigration*, Longmans, Green and Company, New York, 1933.

² In 1940, 70,756 immigrants were admitted.

ment of Justice than the Department of Labor, President Roosevelt in the administrative reorganization of 1939-1941 transferred it to that department. Representatives of this Bureau are stationed during normal times at consular offices in the countries in which most immigration originates; they examine the applications of those who wish to enter under the quotas. A border patrol of approximately 1000 agents watches the borders separating the United States from Mexico and Canada, attempts to prevent illegal entry, and tracks down some of those who are in the United States without authorization.

Aliens who commit serious crimes, who become public charges within five years after their entrance, or who turn out to be communists, fifth columnists, or other public menaces may be **Deportations** deported from the United States to the countries from which they came or to any other country that will receive them. During the drive against so-called "reds" in 1920 large numbers of persons were transported at government expense to the Soviet Union. More recently there have been fairly large-scale deportations of gangsters and other criminals and of Mexicans who were among the first victims of the depression. During the worst of the depression when the drive against the gangsters was still active and when many aliens ceased to be self-supporting, something like twenty thousand persons were deported in a single year; but the recent record is in the neighborhood of ten thousand.¹ In 1941 fairly large numbers were being held for deportation until such a time as it would be feasible to return them to the various European countries.

Deportation has been diversely viewed by the American people. Some feel that undue caution has been used and advocate getting rid of all foreign-born law breakers, recipients of relief, **bund** members, and communists. They say that these elements **Pros and Cons of Deportation** are a menace to the country and ought by all means to be ejected. Others are inclined to believe that the United States has gone too far. They point to the seizure of innocent persons in 1920,² to the ruthlessness of exploiting cheap labor in boom days and then ejecting it when hard times come, and finally to the fact that returning political prisoners to such countries as Germany, Italy, and the Soviet Union is frequently tantamount to sending them to their death.

¹ In 1933, 19,865 persons were deported at government expense.

² For a spirited book on this subject, see L. F. Post, *The Deportation Delirium of 1920*, Charles H. Kerr & Co., Chicago, 1923.

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CHAPTER VI

POPULAR RIGHTS AND LIBERTIES

THE liberties of the people who inhabit the United States cover a broad field.¹ Many of the rights guarantee freedom in matters of personal conduct; others relate to the protection of those who are unfortunate enough to find themselves in the clutches of the police; still others have to do with property. Although the scope of these rights varies somewhat from time to time, depending upon the tenor of American life—in periods of national emergency they are invariably circumscribed to some extent—their Scope they are in general reasonably extensive. Even before the wave of totalitarianism swept over Europe, the rights of Americans were such that the United States was popularly known as the “land of the free.” Perhaps at that time only British subjects could boast of consideration from their government equal to that associated with the United States, although the French did nominally enjoy more extensive rights and even in practice fared quite well. It goes almost without saying that the modicum of personal rights permitted the people of Germany and Italy during prewar times has now been sadly curtailed. England has clung tenaciously to her heritage in this field and, considering the critical character of the times, has done amazingly well in maintaining them intact.² Nevertheless, more than ever the United States is looked upon as the chief haven of personal freedom and property security, with the result that refugees have come from Europe in sizable numbers and eminent men, such as Albert Einstein and Thomas Mann, have sought American citizenship.

There is no single source from which our liberties have stemmed. Many of them go back several centuries to the struggles which the English commoners had with their kings; the rights they then won were embodied in the common law which we have inherited from them. Other rights were developed by the lengthy Source of Rights

¹ The rights given in the constitutions of both the United States and the forty-eight states ordinarily extend to aliens and citizens alike.

² Despite the difficult character of the times, England maintained far-reaching freedom of press, even to permitting until the spring of 1941 the *Daily Worker*, the communist paper, to appear regularly.

contact which the colonists had with the wilds and open spaces of America and were expanded by the experiences of the frontiersmen as they pushed westward.¹ Certain important rights have been largely the contribution of the Supreme Court.² Congress and the state legislatures have done their bit by including liberties in the statutes which they have from time to time enacted. Also, custom and usage have played an important part in the building up of the body of rights.

Unlike countries with unitary governments where liberties rest on one foundation, the United States has no single basis for its popular liberties. Certain rights are granted by the national government, while others come from the forty-eight states. In general, the rights which are granted by the Federal government coincide with those which the states permit—thus freedom of speech, the press, and religion are stipulated by the federal bill of rights and repeated in most of the state constitutions. On the other hand, there are liberties guaranteed by the federal Constitution—a grand jury indictment in federal criminal proceedings of a serious nature, for example—which are not to be encountered in some of the states. Conversely there are in a few instances state liberties which are not enumerated in the federal Constitution. Obviously this situation makes for a lack of clarity, since it is impossible to state categorically all of the rights which prevail throughout the United States. The question may present itself as to why we have a dual system. The explanation is that each government under a federal form is permitted to some extent at least to specify popular liberties in so far as these involve a limitation of its officers and agencies. Thus the national government stipulates a jury trial in its own courts, but the states have to declare what principles shall be observed by their officials in the conduct of duties.

Despite the fact that many of the rights of citizenship are now laid down in the Constitution and laws of the United States, it should not be supposed that such formal recognition constitutes a very adequate safeguard. In the last analysis these rights depend in very large measure upon public opinion—at least for their vigorous application. It is, of course, one thing to have rights specified in a constitution or in law and quite another thing to have

¹ For interesting discussions of the influence of the West, see F. J. Turner, *Influence of the Frontier in American History*, Henry Holt and Company, Inc., New York, 1893; and B. F. Wright, "American Democracy and the Frontier," *Yale Review*, Vol. XX, pp. 349-365, December, 1930.

² Perhaps the best example of this is the expansion of the due process clause.

such rights actually observed, as even the experience of the United States indicates. Under machine dictatorship, for instance, rights have a disposition to vanish. No mature person would imagine for a moment that the people who lived under the domination of a Huey Long or a D. C. Stephenson enjoyed many of the rights expressly guaranteed to them by the Constitution and laws of the federal and state governments. If public opinion sleeps or is sluggish, all sorts of perversions will creep into the body politic. One may be sure that rights will be curtailed and even disappear. An examination of the constitutions of the Soviet Union and some of the Latin-American countries gives one the impression that far-reaching rights are conferred upon the people of those countries, but very little in the way of rights is to be observed in practice.

Inasmuch as liberties have stemmed from different sources and are undergoing more or less constant change, it is not possible to compile a complete list of them, at least a list that will have usefulness over a period of time. Many of the most honored rights are, of course, easily accessible in the first eight amendments to the federal Constitution; others are to be found in the bill of rights which commonly are included in state constitutions. An adequate understanding of the rights resulting from judicial interpretation and statutory elaboration is somewhat more difficult, especially if more than a general picture is desired. Finally, it requires the most intimate knowledge of the current political scene if one is to appreciate the exact extent to which these rights are actually put into practice at any given time. In general, the rights at any period fall into three convenient categories: (1) those relating to personal conduct, (2) those regulating the judicial process, and (3) those which safeguard property. The remainder of this chapter will deal in some detail with these three types of rights as they are exercised by citizens of the United States today.

**A Listing
of Rights
Difficult**

PERSONAL RIGHTS

The Thirteenth Amendment of the federal Constitution prohibits slavery and involuntary servitude within the borders of the United States and consequently grants to citizens and noncitizens alike the right to be free from human bondage. The legal institution of slavery is definitely outlawed in the United States, but it is sometimes alleged that insidious forms of economic

**Slavery and
Involuntary
Servitude**

slavery continue to exist; indeed some critics go so far as to maintain that Negro slavery was a very benevolent institution in comparison with the industrial bondage which is characteristic of American life today. With such diverse points of view toward the contemporary industrial system, it is difficult to arrive at any very satisfactory conclusion as to the truth of these assertions. Does the high degree of modern specialization which charges a worker with one very small task in the process of manufacture constitute a slavery which is worse than that of the Negroes a century ago? Many Americans apparently feel that it does, judging from the devastating descriptions which they present of the monotony, intellectual deterioration, and fatigue that supposedly accompany such labor. Is the status of the share croppers on the marginal lands actually less desirable than that of legal slaves? Here again the most vitriolic charges have been hurled. Do the company, plantation, and ranch stores which sell to employees on credit at high prices and the laws of some states that make it difficult to leave employment until bills at such stores have been settled in full make for an intolerable servitude? A great deal depends upon the psychology of the persons involved in all of these situations. The liberal intellectual who is accustomed to a life of variety and thrives on novel situations may observe the workers in a shoe factory or on an automobile production line and conclude that such repetition and monotony would be worse than prison. And it probably would in his case, but the real question is, Does the worker on such specialized jobs have the same reaction? There is considerable evidence that large numbers of people not only like sameness but even find it distinctly preferable to successive shifting.

Be that as it may, however, there are certain less controversial, more obvious illustrations of violations of the spirit, if not the letter, of this right. For example, one can cite the laws of some of the western states which provide that sheepherders may not leave their herds until the ranch owners secure a substitute and which indirectly allow the latter to refuse to do this as long as the herder remains in debt at the ranch store. During recent years, though, the Supreme Court has been more watchful in this field so that this freedom is being extended in practice, even if it is not all that it might be now.

In keeping with the right to be free from slavery or involuntary servitude the courts, both federal and state, have long refused to en-

force personal service contracts, beyond awarding monetary damages. Thus a college boy who contracts with a business man to finance his school expenses in return for several years of labor after graduation cannot be compelled to carry through his agreement if he finds such work unpleasant, although he may, of course, be sued for monetary damages.

**Personal
Service
Contracts**

Among the historic rights, obtained only after centuries of struggle, which we today have inherited are those of freedom of speech and of the press. Some unsophisticated persons imagine that these rights are unlimited and confer the license to say anything or print anything that may be desired. Actually they always have certain restrictions attached to them and during times of national emergency may even be drastically curtailed. In ordinary times these rights are restricted in so far as they involve slander, indecency, incitement to insurrection, and similar offenses against the public welfare. Even if statements of an indecent character are based on facts, freedom of speech does not permit their public utterance, lest public morals be contaminated.

**Freedom of
Speech and
the Press**

The last decades have seen several attempts to reduce the scope of freedom of the press. Minnesota passed a law in 1925 which provided for the suppression of a "malicious, scandalous and defamatory newspaper, magazine or other periodical;" apparently with the intention of closing up newspapers which had the temerity to criticize certain politicians.¹ The Supreme Court, while admitting that penalties could be enforced against newspapers which violated the accepted canons of propriety, declared that the Minnesota statute went too far toward destroying freedom of the press. Senator Minton led a crusade in the 1930's to muzzle the press in criticizing the New Deal, but he failed to get his bill through Congress.

During wartime it is invariably the custom to impose added restrictions upon speech and the press. The Sedition Act of 1798, the Espionage Act of 1917, the Sedition Act of 1918, and sections of emergency legislation passed in 1941 are but a few of the laws that Congress has passed on the subject. In 1941 a special section of the Federal Bureau of Investigation was set up to deal with cases in which it appeared that speech or the press conflicted with the national defense program. Even in times of national emergency the United States record is reasonably good, although

**Freedom of
Speech and
the Press
in Wartime**

¹ See *Near v. Minnesota*, 283 U. S. 697 (1931).

it is true that on several occasions there have been "scares" which led to excesses. One of the encouraging aspects of the picture is that the courts, especially the Supreme Court, have remained somewhat above the clamor of certain public officials and "superpatriots"¹ for almost complete abandonment of these rights.²

An interesting but somewhat criticized rule has been applied by the courts in connection with freedom of speech. Under this rule not what is said but rather the possible effect of it determines guilt. Thus a prominent Unitarian clergyman of a fashionable Boston church uttered from his pulpit substantially the same words that were spoken by a soapbox orator in the congested South End of Boston. Both were arrested under charges of violating the sedition laws and convicted in local courts. The Supreme Court reversed the conviction of the clergyman on the ground that what he had said to his sophisticated parishioners could not conceivably have resulted in insurrection against the government; at the same time it upheld the conviction of the soapbox orator on the ground that such words delivered in a section inhabited by large numbers of the poor might lead to undesirable consequences.³

Whether the United States has gone too far or not far enough in extending freedom of speech and of the press is a moot question. The general license of the press in reporting cases pending before the courts has been unfavorably commented upon by many foreign visitors. It is said that many cases are tried in the columns of the newspapers, which, because they are motivated by profit, circulation considerations, and other factors, are irresponsible when it comes to determining guilt or innocence. It is true that the actions of some newspapers in the United States would occasion penal charges in most countries of the world. On the other hand, it is pointed out that freedom of the press keeps arrogant and irresponsible judges somewhat in check.⁴ Shortly after the United States entered the war in 1941 a cen-

¹ This term is applied to those emotionally wrought up citizens who in mistaken zeal would take extreme measures even in minor matters. Some of them express their patriotism primarily in words rather than actions.

² See, for example, *Grosjean v. American Press Co.*, 297 U. S. 233 (1936); and *Herndon v. Lowry*, 301 U. S. 242 (1937).

³ In *Schenck v. United States*, 249 U. S. 47 (1919), Justice Holmes, speaking for the court, said: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger."

⁴ For a more detailed discussion of this subject, see Z. Chafee, *Freedom of Speech in the United States*, Harvard University Press, Cambridge, Mass., 1941.

sorship system was established. The necessity of such a step was generally recognized, though critics claimed that the Office of Censorship pursued a short-sighted policy based on unreasonable caution.

Another historic right which applies to both citizens and aliens is that of freedom of religion. The original settlers in the American colonies had in many instances left their English and French homes to seek freedom of religion; consequently this right has been particularly dear to large numbers of their descendants. On occasion there has been intolerance—even on the part of those who themselves suffered hardships in order to worship God as they believed proper. The Klan scourge which spread so amazingly through the South and Midwest during the 1920's indicates how far religious intolerance can be carried even in this day and age. The recent treatment of the Jehovah Witnesses has been interpreted by some observers as a definite denial of freedom. However, there has been no serious agitation for a state church and in general this right has been well safeguarded.

It should be noted that religious freedom does not carry with it the right to engage in practices that violate the criminal laws or the regulations relating to public nuisances. Members of a sect which stresses the importance of a practical display of faith killed their two children one night, with the expectation that their faith in the power of God would restore them to life before the morning dawned. Of course, they were not permitted to escape the clutches of the law when their faith failed although they had had unblemished reputations in the community in which they lived.¹ Congregations of Holy Rollers sometimes are hauled into court for disturbing the peace with their loud singing, speaking in tongues, and noisy conduct during the late evening hours; freedom of religion does not justify such practices.

Both the federal and state constitutions confer on citizens the right to gather together and to "petition the government for a redress of grievances."² This has been held by the Supreme Court to include the general right to move freely about the country, for in order to petition it may be necessary to journey to Washington, thus requiring the crossing of several

Freedom of Religion

Limitations on Religious Liberty

Right of Assembly and Petition

¹ They were finally sent to an institution for the criminally insane because no other appropriate place was available.

² In the federal Constitution, see Amendment I.

states.¹ Some states have sought to limit this right in the cases of those likely to become a public charge; ² others impose fees that in a measure may be interpreted as having the effect of a hindrance to free movement; ³ but in general the United States has a good record. In contrast to those countries, such as Peru and some of the former eastern European countries, in which one is not permitted to leave home without a police permit and in which one must be examined every few miles before proceeding, the American practice is most liberal.⁴

During labor disputes and strikes there has been a disposition on the part of certain states to deny the right to assemble—thus in Terre Haute, Indiana, a few years ago citizens were not allowed to meet together in groups for some seven months during labor troubles and one visiting professor was lodged in jail because he persisted in waiting for his wife on a street corner. The right to petition has, however, usually been accorded, provided the petitioners contented themselves with presenting their petitions in writing. But when the bonus marchers descended on Washington during the Hoover administration and when various relief organizations attempted to put pressure on Congress and the President by sending large numbers of representatives to Washington during the Franklin D. Roosevelt administration, steps were taken to handle the problems resulting. The right to petition apparently does not carry with it any enforceable obligation on the part of Congress and the President to heed such applications. Large numbers of petitions, some of which contain the names of thousands of persons, are sent to Washington every year. Of course, a few receive serious attention, but a great many are regarded as of slight importance.

The Second Amendment of the federal Constitution specifically provides that "the right of the people to keep and bear arms shall not be infringed." For many years this was also regarded as a fundamental right by the states, but the increasing congestion of population, the rise in the crime rate, and establish-

**Right to
Keep and
Bear Arms**

¹ See *Crandall v. Nevada*, 6 Wallace 35 (1867), and *Edwards v. California* (1941).

² Twenty-seven states may be cited, but in the "Okie Case" noted above, the Supreme Court ruled out such restrictions.

³ Some states levy heavy fees on drivers of cars from plants in the Midwest to the Pacific coast when such cars are not their personal property. Trucks may also have weight and other taxes charged against them to such an extent that free movement across state lines is made difficult. See Chap. 3.

⁴ However, as a wartime measure second generation Japanese who are American citizens by virtue of birth were restricted to some extent in their movements in 1942.

ment of a professional army and police have served to render the keeping and bearing of arms not only unnecessary but a public menace. Increasingly, therefore, it has become customary for the states to limit the keeping of arms to those who receive a permit from the police. All others are regarded in illegal possession of such weapons and may be dealt with accordingly.

The Fourth Amendment of the federal Constitution declares that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and adds that "no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." This is another example of a right which was won by the English only after long effort and which was brought to the colonies by the early settlers. Unlike certain other rights which have lost their meaning, this continues to be of considerable importance in both federal and state jurisdictions. As crime has become highly organized, the police have been constantly tempted to resort to ruthless methods. But for this historic right, it is probable that some houses would be ransacked at frequent intervals, not only because they might seem suspicious but also because the police might wish to display their authority. As it is, a search warrant must first be obtained, unless the police see a crime in the process of being committed or are in actual pursuit of a known criminal. Even so, there have been some modifications in the interest of police efficiency. The automobile, for instance, has presented a new and difficult problem and it has been held that the police do not need search warrants to stop and examine automobiles. Likewise, this right does not cover taverns, cabarets, pool halls, and other places of a public character where people are in the habit of congregating. But the common-law concept of a home as a castle still ordinarily prevails, with consequent necessity of swearing out a warrant before it can be violated or entered.¹

Freedom
from Un-
reasonable
Searches
and
Seizures

Whether they remain at home or travel in another state, residents

¹ Thus, in spite of the fact that in *Olmstead v. United States*, 227 U. S. 438 (1928), the Supreme Court gave its sanction to wire tapping, public pressure was great enough that the Federal Communications Act of 1934 provided "no person" should intercept any interstate communication. Therefore, in 1937 in *Nardone v. United States*, 302 U. S. 379, the court held that even federal agents could not tap wires. However, many states do permit their police to tap intrastate communications.

of the United States have the right of being equally protected by the laws of the various states.¹ This right was originally intended for the assistance of Negroes after they had been freed from slavery, but it has been applied to all persons, including aliens,² and actually is one of the most important of the general rights now conferred. Exactly what is meant by "equal protection of the laws" is not specified in the Fourteenth Amendment; consequently it has been up to the courts to undertake an interpretation. Inasmuch as the Supreme Court does not go into such matters beyond the point involved in a given case, the process of interpretation has been a long-drawn out one, even as yet uncompleted.³ On the surface, this guarantee would require absolute uniformity in the treatment of all persons, but actually the courts have permitted a considerable degree of variation under the guise of classification. The main purpose of the right at present seems to be that of obviating arbitrary, wholly unfair, entirely unwarranted discrimination. But if there is a reasonable basis for treating one class of people in a different fashion from others, then the courts have tended to uphold such legislation. Hence those receiving large incomes or inheriting sizable estates are expected to pay not only more in aggregate taxes but at a rate which becomes progressively higher as the income or estate increases—in the case of the federal income tax the 1941 rate was 10 per cent, going up gradually by the addition of surtaxes until the maximum of 81 per cent was reached. Despite the equal-protection clause California was permitted by the Supreme Court of the United States to prohibit Japanese from acquiring land in that state. Although it would seem anything but "equal protection," as that term would be simply defined, state laws have been upheld by the Supreme Court when they have taxed chain stores at the rate of \$200 to \$500 annually per store while owners of single stores have had to pay only \$1.00 to \$5.00.⁴ On the other hand, the Supreme Court has recently displayed a considerable amount

¹ The equal-protection clause of the Fourteenth Amendment applies only to the state legislatures.

² Enemy aliens in 1942 naturally had their freedom curtailed. The more dangerous were arrested and interned, while all German, Italian, and Japanese aliens were required to notify the police and secure permits before journeying far from their places of residence.

³ Examples of recent cases having to do with equal protection may be cited as follows: *Smith v. Texas*, 311 U. S. 128 (1940); and *Arthur W. Mitchell v. United States, I.C.C., et al.*, 85 L. Ed. 811 (1941).

⁴ See the law of Louisiana upheld in *Great Atlantic and Pacific Tea Co. v. Grosjean*, 301 U. S. 412 (1937) for example.

of concern for the equal treatment of Negroes. Recently this court has held that Negroes must be given equal facilities when traveling by train, equal educational opportunities, adequate judicial safeguards, and so forth.¹

Prior to the seventeenth century Englishmen had to put up with tyrannical treatment from their government. Among the practices of which they particularly complained were bills passed by Parliament ordering punishment without any court trial. These bills also frequently declared the property of the unfortunate person confiscated to the crown and sometimes carried the punishment so far that children and wives were involved. To protect themselves against such iniquitous practices the freemen of England finally made bills of attainder illegal. The framers of the Constitution were sufficiently impressed by this English safeguard to include a similar provision in their draft, although they did not see fit to draw up a bill of rights.² At present it is well established in both the nation and the states that punishment shall be inflicted only after court proceedings and that the penalty shall not extend to relatives of the guilty person.

Along with the prohibition against bills of attainder the framers of the federal Constitution took over another historic English right: that forbidding *ex post facto* laws. This is probably of greater immediate importance than its twin, for there is still a disposition on the part of legislatures to pass such laws occasionally. If one looks up the meaning of the Latin words *ex post facto*, he will find that they refer to something retroactive in character. On that basis Congress could not, as it has done even in 1941, make a middle of the year increase in income-tax rates apply to income earned during the first half of the year. Nor would it be possible for a state to apply a reduction in the penalty inflicted for first-degree murder from hanging to life imprisonment to persons who had committed such crimes while the old penalty was in force. However, the Supreme Court has ruled that *ex post facto* laws as prohibited by the federal Constitution include only those dealing with criminal matters and then only when such laws operate to the disadvantage of the accused.³ Consequently Congress has the authority to enact retro-

Freedom
from Bills
of Attainder

Freedom
from *ex
post facto*
Legislation

¹ *Missouri ex rel. Gaines v. Canada, Registrar*, 305 U. S. 337 (1938), etc.

² Art. I, sec. 9.

³ See *Calder v. Bull*, 3 Dallas 386 (1798).

active tax and other civil laws, while the states may do the same even in the criminal field as long as they do not make more difficult the lot of persons involved. As the Constitution refers to *ex post facto* legislation the following types of laws are forbidden: (1) those which increase the punishment for an already committed offense; (2) those which make it easier to convict an already accused person; (3) those which make an act, innocent when committed, a criminal offense; and (4) those in which the general seriousness of a crime is "aggravated" or made "greater than it was when committed."¹

At previous periods in the history of the world treason has included almost every conceivable offense; even in the Germany of the Third Reich a long list of acts are branded as treasonable—a Catholic nun who engages in taking funds in and out of Germany for the benefit of her Order may on such a charge have her head chopped off by the formally dressed public executioner with the gleaming Hitler axe. The framers were mindful of the onerous and frequently intolerable character of a system under which all manner of acts are declared treasonable and consequently restricted treason to only two acts: (1) levying war against the United States, and (2) "adhering to their enemies, giving them aid and comfort."² Not content with limiting treason to the most serious offenses striking at the very foundation of the nation, the framers also saw fit to prescribe the conditions under which persons could be convicted of it. "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on open confession in court." Finally, relatives of traitors cannot be tortured by a Gestapo or sent to a concentration camp, for although Congress is given power "to declare the punishment of treason," the Constitution adds that "no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."³

RIGHTS RELATING TO THE JUDICIAL PROCESS

Four of the eight amendments which constitute a federal bill of rights are devoted to rights relating to the judicial process;⁴ state constitutions also deal with this process, though they do not always coincide with the federal provisions. Having examined some of the rights dealing with personal conduct, it is now in order to look at some

¹ *Ibid.*

² Art. III, sec. 3.

³ Art. III, sec. 3.

⁴ These are Amendments V-VIII.

of these safeguards that are placed around the judicial process.

In criminal cases it is ordered by the federal Constitution and most of the state constitutions that a "speedy and public trial" be accorded.¹ The latter portion of the requirement is invariably met by American courts; indeed it is taken for granted. It may be added that such was not always the case, for in a certain period of English history it was not uncommon to hold secret and "star-chamber" sessions at which the accused was at a distinct disadvantage. Sometimes the size of the courtroom limits the number of those who can be permitted to attend trials in which there is great public interest. The judge may order the courtroom cleared of minors and certain other classes on the ground that the nature of the testimony is such that moral contamination might result. But this is the exception rather than the rule. In contrast, the stipulation relating to a "speedy" trial is interpreted very liberally by American judges, especially in state courts, so that several months usually elapse before a trial can be held; a period of two or three years is not at all uncommon between commission of the crime and final disposition of the case; while occasionally seven or more years may pass before a bitterly fought criminal case is finally settled by an appellate court. In no important country of the world is justice as slow-moving as in the United States and that despite the constitutional guarantee of a speedy trial.

Under the codes of procedure which operate in the totalitarian countries cases are often disposed of within a few days;² even in England, where safeguards similar to those in the United States are to be found, important criminal cases rarely are pending for more than a few weeks. American courts are in general the busiest in the entire world and that makes for crowded dockets. But more than that is the emphasis placed upon legal technicalities in most jurisdictions—almost countless motions of a dilatory and frequently meaningless character as far as the guilt or innocence of the accused is concerned will be resorted to by shrewd attorneys. Sometimes, they feel that a slow trial, coming after the public has forgotten, is to the advantage of the accused, particularly in cases involving capital punishment. Judges not only are inclined to permit lawyers considerable leeway in such matters, but even under the law often have no authority to sweep away such technicalities, even if

Comparison
of American
and Foreign
Records

¹ Amendment VI.

² Yet in Soviet Russia some political cases have stretched over months.

they are irritated by the unnecessary consumption of time and effort.¹ It is probable that the delay could be drastically reduced if lawyers desired to complete their cases at an early date. Monte Lehman, a distinguished member of the bar in New Orleans, once stated that in Louisiana where the courts were at the time some three years behind with their work lawyers could if they wished put through cases in less than a year.² In general, lawyers are not eager to hurry matters, for they apparently feel that justice should be leisurely—besides clients are less likely to object to substantial bills if cases are stretched over several months or even years.

One of the most important guarantees relating to the judicial process still bears the somewhat mystifying title derived from the first two words³ in the ancient form used by the English. When persons were arrested and held in jail without a trial, the English developed the writ of habeas corpus, which permitted prisoners to demand a court hearing at which they could be informed as to why they were being held. This writ was brought to America by the colonists and is at present guaranteed by the Federal government and by all of the states except Louisiana.⁴ Hence persons held in jail may instruct their lawyers to sue out such a writ unless they have been indicted by a grand jury or are otherwise held to face definite charges. A writ of habeas corpus has the effect of bringing such persons before a court within a short period of time and compels jailers to satisfy the judge that proper grounds exist to justify incarceration. As a result of this safeguard persons in the United States cannot be imprisoned for an indefinite period without trial; nor can they be held to await trial without adequate reason.

Irrespective of what new evidence may be discovered by the police, it is not possible in either federal or state courts for an accused person "to be twice put in jeopardy of life or limb" for the same offense.⁵ In certain instances this right permits those who

Writ of Habeas Corpus **Double Jeopardy**

¹ The emphasis upon technicality is somewhat less than in the past.

² At a meeting of the American Political Science Association and Association of American Law Schools held in New Orleans in 1929.

³ These two words literally translated mean "you have the body." The Latin form of the writ began with these words which were addressed to the jailer. They do not imply that the person named is dead and that the jailer is in possession of a corpse as modern usage might imply. The jailer is ordered to produce the "body" at a hearing before the judge who issues the writ and at a time which is fixed.

⁴ Louisiana bases her legal system on the Napoleonic Code which makes no formal provision for such a common-law practice.

⁵ Amendment V.

commit serious crimes to go unpunished, with the result that the public safety may be impaired. On the other hand, if prosecutors and police, at times interested more in political advancement than in justice, were permitted to try an opponent on criminal charges again and again an intolerable situation would ensue. The English freemen who originally devised this safeguard were familiar with such perversion of the judicial process and concluded that it would be preferable to have a few guilty persons go unpunished than to perpetuate injustice. It should be remembered, however, that this prohibition does not extend to cases where the jury has been unable to agree.¹ Nor is an appeal by a convicted person to a higher court considered double jeopardy but rather the continuation of the one trial.² Finally, it may be pointed out that our laws are so complex at present that a number of crimes may be committed during what would appear to be on its surface a single offense. For example, a thief who robs a store of fifty cartons of cigarettes at night may have been guilty of the following crimes: (1) illegal entry involved in the breaking into the store, (2) theft of the cigarettes, and (3) disposal of the cigarettes to a "fence." He may ordinarily be tried separately on each charge and even if acquitted on one charge may be tried on another without violation of the double jeopardy clause.

All persons accused of criminal acts must be given the right to employ counsel of their own choice and to consult with their counsel in preparing a defense. If they are unable to pay for legal assistance, the courts of both state and federal grades are obliged to furnish it at public expense. In the latter cases it is frequently the custom for judges to ask the newest members of the bar to act in such a capacity, with the result that the counsel may be inexperienced. Where a judge indefinitely assigns all of the local bar to assist accused persons and permits only a day or so for preparing the defense, the Supreme Court has ruled that there has been a denial of constitutional rights, with consequent necessity for a new trial.³

In criminal proceedings an accused person cannot be compelled "to be a witness against himself." ⁴ Refusal to take the witness stand may, of course, be interpreted as an admission of guilt, but the accused can at any rate refrain from giving direct testimony

Right of
Counsel

Witnesses

¹ *Thompson v. United States*, 155 U. S. 271 (1894); *Lovato v. New Mexico*, 242 U. S. 199 (1916).

² *Tromo v. United States*, 199 U. S. 521 (1905).

³ *Powell v. Alabama*, 287 U. S. 45 (1932).

⁴ Amendment V.

in open court. Some observers contend that this right means relatively little in many jurisdictions because police make use of "third-degree" methods to extract signed confessions before the trial begins.¹ Of course, it is possible for an accused to assert that the confession presented to the court was obtained under illegal circumstances and the courts may take cognizance of this when determining the admissibility of such evidence or the weight to be attached to it.² Nevertheless, no fair-minded person can ignore the part which third-degree techniques play in modern American judicial administration as a modification of this right. The immunity from taking the witness stand also extends to a husband or wife of an accused person. If the accused waives his right and voluntarily takes the stand for the purpose of presenting his side of the case, he must be prepared to be cross-examined by the prosecutors, for this type of questioning does not then constitute a denial of his rights.

Another guarantee to an accused person stipulates that he must "be confronted with the witnesses against him."³ Before this right was established persons charged with criminal acts sometimes did not even know the identity of their accusers, to say nothing of what they said in court. Therefore now, if a prisoner is not present during everything which is said by witnesses, appellate courts will ordinarily declare a trial invalid and order new proceedings. A third right belonging to this category gives those who are being tried on criminal charges facilities for securing witnesses. A prisoner lodged in jail is in no position to obtain them—even his attorney may find that difficult both because of the cost and the reluctance of some people to appear voluntarily in court. To enable an accused person to marshal all of the evidence pointing to his innocence, the "compulsory process for obtaining witnesses in his favor" is made available.⁴ Needless to say, this is a most important right.

In federal cases persons charged with a "capital or otherwise infamous crime" must be indicted by a grand jury "except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."⁵ Some of the states have substituted the process of information, in which the prosecutor lays the evidence which he has collected before the judge

¹ See E. H. Lavine, *Third Degree Methods*, Garden City Publishing Company, Inc., New York, 1934.

² *Chambers, et al. v. Florida*, 309 U. S. 227 (1940).

³ Amendment VI.

⁴ Amendment VI.

⁵ Amendment V.

and asks for judicial sanction to proceed with a trial and this has been upheld by the Supreme Court.¹ Strangely enough, the grand jury has now been abandoned in its old home, England, but it is still required in federal courts of the United States where serious offenses are charged. In addition, the federal Constitution orders that a jury trial shall be given in all federal criminal prosecutions and in civil cases which involve more than \$20. States usually have similar requirements, though they may be less far-reaching. Of course, the accused may elect to waive jury trial and request the judge to decide the facts as well as to apply the law, which is done in large numbers of cases. An additional requirement having to do with trial juries in federal criminal cases is to the effect that the jury shall be "impartial" and "of the state and district wherein the crime shall have been committed."² This carries out the historic mandate of the common law that accused persons shall be tried by juries of their peers composed of "twelve good men and true."

Bail is not permitted in certain types of criminal cases on the ground that such a concession would not be in keeping with the public interest. But when prisoners are allowed to go free on bail pending their trials, both the national government and the states usually prescribe that bail shall not be "excessive."³ One of the quaintest provisions relating to the judicial process is that of the Constitution of the United States which declares that "cruel and unusual punishments" shall not be inflicted.⁴ It might seem to most present-day students that any prison sentence or death penalty would be "cruel" if not "unusual." The men who drafted this amendment lived in a day when human ingenuity devised all sorts of strange and fearful punishments. Convicted criminals might be broken on a wheel, burned at the stake, dragged to death under a cart, have their ears cut off, and subjected to many other indignities. In order to ward off such inhuman tortures the prohibition against "cruel and unusual punishment" was inserted.

Punishment meted out in the United States is at least conventional today, although the conditions of some of the prisons can scarcely be regarded as humane. Interestingly enough, the "cruel and unusual punishment" which once was primarily associated with court sentences—though of course the Inquisition was known to employ all

¹ *Hurtado v. California*, 110 U. S. 516 (1884).

² Amendment VI.

³ Amendment VIII.

⁴ Amendment VIII.

**Excessive
Bail and
Cruel and
Unusual
Punishment**

sorts of tortures to bring about confessions of heresy—is now almost confined to preliminary treatment accorded by the police. In other words, it is the third-degree methods which now frequently attain a character of cruelty and dreadfulness. Beating with a rubber hose may be as painful as some of the colorful practices of old; while the grilling which goes on without interruption hour after hour, sometimes for twenty-four hours at a stretch, involves as great torture to the nerves as some of the ancient devices today branded as “unusual.” Of course, it is not accurate to say that such third-degree methods are legal, but they are sufficiently common to constitute a serious modification of the right to be free from “cruel and unusual punishment.”

The safeguards placed around the judicial process thus far examined are more or less self-explanatory, although they cannot always be taken at their face value. The final right to be considered **Due Process of Law** is a far more tenuous one; yet its importance is very great, perhaps exceeding that of any other single guarantee in this category. The Fifth Amendment contains a clause which commands the national government not to deprive anyone of “life, liberty, or property, without due process of law,” while the Fourteenth Amendment repeats an injunction against such action on the part of the states. Exactly what is involved in the requirement of “due process”? It is impossible to draft a definitive statement which would remain adequate over any considerable period of time, for this guarantee is one which is undergoing more or less constant development. In the last analysis due process is what the courts, particularly the Supreme Court, say it is and they are faced every year with numerous cases necessitating the application of this clause. Roughly speaking, about 40 per cent of the cases which have come to the Supreme Court of the United States during the last half century or so have involved due process. As conditions of human existence change in the United States, new questions are raised in connection with judicial procedure; naturally, therefore, due process is not exactly the same today as it was yesterday and will not be entirely the same tomorrow as it is today. Nevertheless, the changes in the interpretation by the courts have been gradual and consequently permit certain generalizations. To begin with, the courts limited due process to the procedure of governmental agencies, particularly of courts. Indeed it was not until almost a century had elapsed that substantive due process received much attention. Inasmuch as we are here dealing with rights which are related to

the judicial process, chiefly procedural due process will be examined for the time being.

The Supreme Court has never attempted a brief statement which might be used as a definition of procedural due process; rather it has ordained that "the full meaning (of this term) should be gradually ascertained by the process of inclusion and exclusion in the course of decisions in cases as they arise."¹

Procedural
Due Proc-
ess

With hundreds of cases coming under this classification, it would be possible to devote lengthy attention to the details of what has been declared to be procedural due process. In a textbook which has to include many topics such a course would scarcely be feasible. Fortunately, however, the decisions of the Supreme Court hinge around three or four broad principles which are reasonably understandable: (1) a fair trial must be given, (2) the court or agency which takes jurisdiction in the case must be duly authorized by law to exercise such prerogative, (3) the defendant must be allowed an opportunity to present his side of the case, and (4) certain assistance, including counsel and subpoenaing of witnesses, must be extended.²

In answering the query as to whether a fair trial has been given, the Supreme Court is increasingly looking behind the scenes, so to speak. At one time a proceeding was called "due process" if only the letter of the constitution and the law was observed.

A Fair
Trial

Thus as long as the law did not expressly forbid Negroes from serving on juries, the court was willing to certify that there was no denial of due process, despite the fact that Negroes in practice were never called for such service. Now, however, the Supreme Court calls for evidence in regard to the actual operation of such a law and if it finds that Negroes have rarely if ever been permitted to act as jurors it declares that there has been a denial of due process in a particular state.³ Again, until a short time ago the Supreme Court was satisfied with a perusal of formal records of lower courts. If, for example, the records showed that a judge had assigned legal counsel to an accused person who could not pay for such service himself the court would conclude that the constitutional requirements had been met. Beginning with the *Scottsboro* case, the Supreme Court departed from its long-held

¹ See *Twining v. New Jersey*, 211 U. S. 78 (1908).

² For an authoritative study which deals in much detail with this general topic, see R. L. Mott, *Due Process of Law*, The Bobbs-Merrill Company, Indianapolis, 1926.

³ *Strauder v. West Virginia*, 100 U. S. 303 (1880); *Pierre v. Louisiana*, 306 U. S. 354 (1939).

policy and inquired what counsel had been assigned and how long a time had been permitted that counsel for preparation of the defense. When it was revealed that the judge had made a blanket assignment of several members of the local bar, that very little if any effort had been exerted on their part toward serious preparation for defending the eight Negro youths, and that the court did not even permit time for such steps, the Supreme Court invalidated the first trial and ordered the case retried.¹

The second requisite in procedural due process is self-explanatory. Courts or other public agencies which act in such a manner as to deprive people of "life, liberty, or property" must be duly authorized by the law to exercise such power. It is obvious that the taking away of any of these is a serious matter which cannot be entrusted to all public officials, irrespective of their capacities.

In every case, whether criminal or civil, the interested parties must be given an opportunity to present their evidence. This does not mean, of course, that they have full leeway in bringing all manner of irrelevant material to consume the time of the judge or administrative commissioner. Nor does it necessarily mean that time set aside for such a purpose shall be unlimited. But it does necessitate a reasonable consideration in such matters: pertinent facts cannot be refused admission, nor can such a brief period of time be allotted that it is out of the question to present the case. The query is sometimes made as to whether the right to be heard implies any particular attitude on the part of the judge or presiding officer. May a judge write letters while testimony is being given? May he take a nap while sitting on the bench during the course of a trial? May he absent himself entirely from the courtroom while evidence is being produced? May he show by his general remarks that he

¹ See *Powell v. Alabama*, 287 U. S. 45 (1932). Similarly, in an Arkansas case in which five Negroes were sentenced to death under pressure of a mob the counsel alleged before the Supreme Court: "The Court and the neighborhood thronged with an adverse crowd. . . . The counsel did not venture to demand delay or change of venue, to challenge a jurymen or to ask for separate trials. He had no preliminary consultation with the accused, called no witnesses for the defense although they could have been produced, and did not put the defendants on the stand. . . . The trial lasted about three quarters of an hour . . . no jurymen could have voted for acquittal and continued to live in Phillips County and if any prisoner had by any chance been acquitted by the jury he could not have escaped the mob." The Supreme Court ordered the district court to examine the facts to determine the truth of the allegations and commented that a mere "mask" of legality was not enough to fulfill the requirement of due process. See *Moore v. Dempsey*, 261 U. S. 86 (1923), quoted from C. G. Fenwick, ed., *Evans' Cases in Constitutional Law*, Callaghan and Co., Chicago, 1938, p. 1016.

is utterly without interest in anything that the parties could possibly bring forward? Generally speaking, this right seems to have more to do with the opportunity to present a case than with the attention which the presiding official gives to it during the presentation. Of course, if it could be shown that the judge had left the courtroom during the trial without proper adjournment or that he was actually oblivious to what was going on because of inebriation or sleep, it is probable that a denial of due process would be declared by an appellate court. But the mere fact that the judge or administrative officer seems inattentive, bored, indifferent, somewhat unsympathetic, disposed to read a newspaper or write a letter, has thus far not usually been sufficient to invoke successfully procedural due process. Considering the greater attention which appellate courts are currently giving to the spirit of the Constitution, it is possible that a more rigid code of judicial conduct will be required in the future.

Finally, procedural due process demands that a reasonable amount of public assistance be given to litigants in those cases where for reasons of impecuniousness or lack of knowledge adequate defense has not been made. The right to counsel is specifically set down in the Constitution, but due process would go further and lay down the rule that such counsel must be reasonably competent. Likewise, the services of the public authorities are provided for the subpoenaing of witnesses, but due process would again go further to inquire whether an honest attempt was made by the public authorities to locate the desired witnesses.

In general, substantive interpretation of the due-process clause has had most importance in relation to property rights and civil law, but it is still necessary and vital as a protection against unfair criminal law and in consequence against unfair judicial processes. While procedural due process demands that the actual conduct of the trial be in conformity with objective standards of justice, substantive due process demands that the laws under which the trial is conducted be themselves just and fair. Part of substantive due process is, in effect, about the same as the equal-protection clause. The laws must operate equally and without discrimination. More important, however, the phrase requires that the laws be exact. They must contain an ascertainable standard of conduct.¹ It would be obviously unfair if a person had no way of

Public
Assistance

Substantive
Due Process in Re-
lation to
Criminal
Proceed-
ings

¹ *United States v. Cohen Grocery Co.*, 255 U. S. 81 (1921).

knowing whether or not a certain act would be illegal until after he has been convicted of disobeying an indefinite restriction. Of course, it is sometimes impossible even when the text of a law is clear to decide before the courts have ruled whether a borderline action is an offense or not. But, in general, laws must be accurate enough to guide the conduct and conscience of those who are subject to them.

PROPERTY RIGHTS

The third type of right, conferred upon citizens of the United States and to a generous extent upon aliens as well, has to do with property. Great emphasis has been placed upon this right by many people in high positions; indeed it is not too much to say that some influential citizens go so far as to judge such a right as the most fundamental of all, the very foundation of the American system of government. There is probably no country in the world where as much excitement can be generated as in the United States by a proposal which would seem to modify property rights to some rather minor degree. Not only is the term "socialist" in poor repute in most American circles, but its very mention is the cause of great perturbation in many hearts. Many of the endeavors of the national government during the 1930's aroused the most vigorous and deep-seated opposition on the part of many substantial citizens, largely because of the threat which was seen to property rights. Why the American people should react so much more positively to what would appear to be minor rather than major changes in property rights than other people of the world it is difficult to say. Socialists have been regarded as respectable for some years in Argentina and Chile to the south of us; in pre-Hitler Germany the Social Democrats were extremely powerful. Even in England there has been nothing like the disapprobation America has exhibited toward socialists. The Labor party includes many of them in its membership, while even the Conservatives have at times at least accorded them respect.

The general American philosophy is that all forms of property should be privately owned. Exceptions would, of course, be regularly made in the case of warships, public buildings, highways, **Property Ownership** and related property, but natural resources, industrial holdings, banking and insurance, utilities, distribution facilities, and most other forms of property are closely identified with private ownership. Legally no titles to property are absolute, but most Americans

consider the legal rule purely formal. Beyond levying taxes they do not concede to the government any control over property; indeed many would say that the primary purpose of government is the protection of private property against thieves, firebugs, and all others who would threaten its safety. During the present century there has been some movement away from this laissez faire concept—for a few years following 1933 the trend was accelerated to such an extent that it seemed to many citizens to threaten the very existence of the commonwealth. More recently there has been a change in attitude, which is hailed by some as an indication that something may be saved out of the debris even yet. At any rate we still have a high degree of freedom in the ownership of property in the United States. The government has made forays by setting up T.V.A., acquiring national forest lands, putting municipal water plants on a public basis, and creating Federal reserve banks, but the broad expanse of the field has been left unimpaired. The most important steps taken by the government have probably been in connection with progressive income- and inheritance-tax rates; in this connection original ownership has not been interfered with, but a heavy share of profits and benefits of inheritance has been annexed by the government.

While the institution of private property continues to enjoy a great deal of vigor in the United States, both the state and national governments have found it increasingly necessary to regulate its use. That is not to say that owners do not still enjoy wide discretion in directing its course, but it does mean that some attention has been given to cases where unregulated use conflicts with the public interest. Hence the national and state governments everywhere now impose certain requirements upon those who engage in furnishing transportation facilities, electrical energy, gas, telephones, credit, insurance, amusement, hotel accommodations, and related services. Standards are set up which regulate charges, financial dealings, safety, convenience, and so forth.¹ No longer can a bank or brokerage firm unload on its clients the worthless securities of some foreign government without assuming some responsibility for acquainting them with the facts. Nor can transportation companies discontinue service without obtaining official consent merely because they are not making as much money as they would like.

Regulation
of Property
Use

The Constitution by implication gives the national government the

¹ In not all of these cases are charges regulated or financial dealings limited.

authority to take private property when it declares: "nor shall private property be taken for public use without just compensation,"¹ States are given corresponding rights by their constitutions. The term **Eminent Domain** "public use" is vague and has been variously interpreted by courts, but as a rule the government has displayed restraint in seeking to expand the meaning beyond land for military purposes, for post offices, for highways, and for public buildings. Nevertheless, there are court decisions in the states which uphold the acquisition of electric generating plants, water systems, grain elevators, and certain other properties. "Just compensation" is also subject to some ambiguity, for it does not specify who shall do the determining of what constitutes "just compensation." Ordinarily the public officials seek to agree with the holder of the property on a fair price; if that proves futile the condemnation is put through a court, which, after hearing testimony from both sides, renders a decision as to the price to be paid by the government.

The development by the Supreme Court of substantive due process has been highly significant in connection with property rights. Thus the court has declared invalid minimum-wage laws, maximum-hour laws, industrial court legislation, legislation limiting the use of injunctions in labor disputes, and numerous other acts on the ground that such regulation constitutes a denial of substantive due process in the holding of property.² The attitude of the Supreme Court has undergone far-reaching change during the years since 1936, with the result that some earlier decisions have been reversed³ and certain others would in all probability not be upheld if they came before the court now. Consequently substantive due process is now somewhat less of a safeguard against state and federal police power than previously, but it remains important.

¹ Amendment V.

² *Lochner v. New York*, 198 U. S. 45 (1905), declared maximum hours for bakers unconstitutional. *Adkins v. Children's Hospital*, 261 U. S. 525 (1923), outlawed minimum wages for women. *Truax v. Corrigan*, 257 U. S. 321 (1921), refused to permit states to limit the use of injunctions in labor disputes. *Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522 (1923), held industrial court of Kansas to be a violation of the due process clause.

³ *United States v. F. W. Darby Lumber Co.*, 85 L. Ed. 395 (1941), upheld wage and hour legislation in interstate commerce and *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937), reversed the *Adkins* case. *Senn v. Tile Layers Protective Union*, 301 U. S. 468 (1937), which upheld the Wisconsin Labor Code and *Virginia Ry. Co. v. System Federation No. 40*, 300 U. S. 515 (1937), which upheld the Norris-LaGuardia Act had the effect of negating the *Truax* case.

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CHAPTER VII

THE OBLIGATIONS OF CITIZENSHIP

THERE has been a great deal of emphasis placed on the *rights* of American citizenship; indeed one of the favorite pastimes of public orators and commentators has been that of pointing out how superior the United States is to other countries in this respect. It is, of course, always pleasant to recite the many guarantees of person and property which are given to our citizens. In this period when such rights have almost ceased to exist in many countries of the world, it is particularly reassuring to enumerate the freedom of speech and of the press, the right to hold property and to move freely about, and the many safeguards placed around the judicial process by the United States. It is perhaps not strange that much less attention has been paid to the *obligations* of citizenship, for the very word "obligation" suggests burdens, sacrifice, and other unpalatable responsibilities. Nevertheless, it should not be difficult to perceive that the continuance of the rights depends in no small measure on the extent to which the citizens shoulder their public obligations. In the days when the world situation held no menace to democratic institutions and domestic problems were such as not to tax the resources of the country, it was perhaps possible to emphasize the rights and shirk the obligations; but during these years of emergency it is not too much to say that the very continuance of the rights depends upon the extent to which the rank and file of citizens accept the obligations. Too often rights and obligations have been regarded as antipathetic, with the former to be prized and enjoyed and the latter to be despised and rejected. In reality, the two should go hand in hand, for they are intimately linked together.

The Relation of Obligations to Rights

As in the case of the rights of citizenship, it is not a simple matter to make a complete list of the obligations. The number may be somewhat fewer than that of rights, but there is even less definiteness. The first eight amendments to the Constitution are frequently designated a "bill of rights" and list an imposing array of personal and property guarantees. There is no corresponding "bill of obligations"; indeed the Constitution, strangely

A Catalogue of Obligations Difficult

enough, has little to say about obligations. One must read between the lines and make use of the technique of implication to discover their nature. It is not the intention in this chapter to compile a full list, but in the succeeding paragraphs a number of the most significant ones will be examined.

ACCEPTANCE OF THE AMERICAN SYSTEM OF GOVERNMENT

One of the basic obligations which citizenship involves is that of belief in the underlying principles of the American system of government. Aliens who sojourn in the United States may be excused perhaps when they view our governmental institutions with lack of enthusiasm and display fondness for the Fascist, Nazi, or communist ideologies of government. But the very nature of citizenship implies general acceptance of the government of which that citizenship is a part. It is as illogical for a citizen of the United States to believe in the tenets of Hitler as it is for an Eskimo to advocate the introduction of steam heat in the igloo. It is, of course, true that the majority of the citizens of the United States have not exercised any direct choice in becoming citizens, a fact which undoubtedly adds to the difficulty. Nevertheless, it is not too much to assert that those who are convinced that the American system of government is basically wrong can scarcely be regarded as more than nominal citizens of the country. The reasonable course under such circumstances would be to transfer residence to the country whose governmental system one favors, but that is impractical in many cases. The very least that can be expected of such misplaced persons is neutrality: they are bound to the United States by economic ties and in return for a livelihood and ordinary protection should not seek to further the overthrow of that government. If Adolf Hitler is accurately informed, there are many of these pseudo citizens who are actively seeking to supplant the present system of government in the United States with a Nazi type. Needless to say, such fifth-column activities are as menacing to the public order as offenses, such as stealing from the public funds, bribery, and intimidation at the polls, which are punishable by heavy prison sentences.

There is always a danger, especially in times of crisis, that insistence upon acceptance of basic principles will be carried too far. It is one thing to ask that all citizens display loyalty to the underlying principles; it is quite another to demand that they accept every detail. To ban criticism of the American system would be almost as in-

excusable as to justify activities that are aimed at its overthrow. One may rightfully be proud of the achievements of the United States, but that does not imply that the government is perfect. Not only should the freedom to criticize weaknesses be preserved, but such a course might itself well be regarded as an obligation of citizens. In other words, the best friends of the American system are not those who display their jingoism at every opportunity, particularly when publicity is to be obtained, and cry from the housetops that everything is as it should be. The future of the American system depends upon its success in ridding itself of graft, inefficiency, and incompetence. These perversions thrive on jingoistic patriotism and need constant denunciation on the part of the citizens if they are to be kept in check. Of course, criticism as far as possible should be constructive rather than destructive, although in cases of outright corruption vigorous denunciation may be the only means of cleaning house.

**Support
Does Not
Mean
Jingoism**

Closely related to the acceptance of the fundamental principles of American government is the obligation to observe the laws which have been enacted by that government. True, some of the laws have been carelessly drafted, while others embody hardly a modicum of wisdom and common sense. More than that, there are so-called laws which though still on the statute books have not been enforced for decades and indeed have long been rendered obsolete by changed conditions.¹ Certainly it is the duty of those charged with law-making to perform their task with care and wisdom; periodically it may be reasonably expected that they will set up committees to go over existing statutes for the purpose of recommending the revision of those which require modification and the repeal of those which have been entirely outmoded. But in so far as a citizen or indeed an alien knows that there is a law relating to a given matter, it is up to him to observe it whether he agrees with its provisions or not. In the event that he finds a law objectionable he has the right—in certain cases possibly even the duty—to seek its repeal. Needless to say, this is one of the most difficult obligations for freedom-loving Americans to accept, as is indicated by the congestion of the courts and our crime rate which in general exceeds those of other countries. The individual

**Observance
of Laws**

¹ Professor Karl Llewellyn of the Columbia University Law School is of the opinion that the term "law" should apply only to those statutes which are commonly known and observed at any one time.

usually reasons that his infraction will do little harm; perhaps he argues that society has dealt unfairly with him and in ignoring a law he is merely getting even. But the fact that what may seem minor violations of traffic laws, for example, are responsible in aggregate for thousands of deaths to say nothing of numerous personal injuries¹ each year ought to indicate to any thoughtful inhabitant of the United States that it is not possible to disregard laws without causing harm to the entire body politic.

ATTITUDE TOWARD POLITICS AND GOVERNMENT

One of the chief handicaps of the American system of government is the widespread feeling that politics must invariably be a dirty game and that anyone who participates is bound to become contaminated. Anyone who has observed the attitude of the National Socialists in Germany has doubtless been impressed by the almost fanatical zeal of those who take part in the activities of the party or of the government of the Third Reich. Apparently even the members of the Gestapo, who engage in the most inhuman torture of suspected enemies, perform their duties with a glow of righteousness. Such an excess of zealotry has its limitations and would not be desirable in the United States. However, there is room for extensive movement in that general direction without danger of menace. As long as citizens view political activity as dishonorable, and hence remain aloof themselves, they encourage the professional politician and the political machine to run the government. Fundamentally there is no reason why standards in politics or government should be any lower than standards in business, education, social organizations, or any other human groups—and it may be added that it is not uncommon even under present circumstances to find fully as much honor and decency in governmental agencies as in business establishments or social groups. Standards in any human institution or organization depend upon the people who compose and manage them. Given a church with ambitious clergy, venal trustees, and indifferent members and there will be scheming for personal advantage, dishonor, and incompetence—and again it may be added that such religious groups are not unknown in the American scene. If citizens are going to have their hands soiled by participating in politics it will be because they are weak to begin with.

**The Dirty-
hands
Attitude**

¹ In 1941 such deaths numbered approximately 40,000 and injuries 1,500,000.

For centuries the Chinese held a philosophy which led them to view government as a necessary evil. As a result, they considered that the government which did the least was the most successful. They even erected a memorial to an emperor solely because he finished his reign in such obscurity that no one could remember what he had accomplished. Under a certain type of social organization there is, perhaps, much to be said for relegating government to such a minor role. However, in a highly industrialized economic system and in a western social organization there must be a powerful government through which the people may cooperate to promote their own welfare. It is possible to sympathize with those who would like to set the clock back and return to an earlier stage when industry was largely of the private-owner and nonmachine type, social life was less complex, and government furnished only the barest services. But the citizen who wants to keep modern industrial organization and the present complicated social system and at the same time limit the role of government to police and fire protection is hopelessly illogical. Such an attitude is inconsistent and displays a lack of appreciation of reality; yet it apparently characterizes numerous Americans, judging from what they say and write. A belief that the government is a necessary evil in this day and age is not one that a responsible citizen can fairly hold. That is not to say, however, that governments should be permitted to exceed their proper sphere and meddle in affairs that can best be left under other auspices. Nevertheless, a critic may be expected to have a more valid reason than prejudice when he argues that the government ought not undertake a certain function.

Government-a-necessary-evil Attitude

Not only is it an obligation of citizens to rid themselves of the dirty-hand and government-a-necessary-evil attitudes; there is a more positive obligation to acquire some understanding of the role of government in the twentieth century. It is probable that most citizens desire a "good" government, but that is so ambiguous a term that it means little. To begin with, it is important to realize that the government is both a policeman and a provider of services. Some citizens seem to have in mind only the former and consequently regard government as primarily negative in character. It is essential to have some understanding of why the government must undertake to regulate business practices and social relationships, unless one is to fall into the far too common error of assuming that regulation is synonymous with persecution, baiting,

An Understanding of the Role of Government

and a dog-in-the-manger perverseness. On the other side of the picture, it is necessary to have some knowledge of what the government is doing in the way of providing services for the people, why such activities are being assumed, and what the effect of such undertakings has been on the general welfare. It is not enough, as some people assume, merely to be able to recite the expenditures of governmental agencies. Of course, there is no reason why a citizen should not know the cost of these enterprises, but cost alone means little unless it is related to what is being done and to the effects produced by a particular program.

INFORMATION IN REGARD TO THE STRUCTURE AND ACTIVITIES OF GOVERNMENT

It is not only a requisite that citizens have an understanding of the place of government in the modern world; they need to be informed of the current structure and activities of the government in national, state, and local spheres. This may seem a formidable obligation indeed in these days when governmental organization is complex and public activities cover a broad field. Of course, most citizens cannot be expected to be experts in these matters, for they have their livelihoods and their social relations to consider. Nevertheless, it is not impossible to acquire a reasonably good understanding of governmental machinery and programs without neglecting other demands. If a part of the time devoted at present to bridge, golf, and other avocations and recreations were set aside for such a purpose, it would make an amazing difference in the general adequacy of citizenship. Such familiarity is almost bound to stimulate interest, which is of basic importance in a popular government. As a result of acquaintance with and interest in governmental forms and practices the citizen would be far more competent in choosing public-office holders, in expressing himself on public questions, and in making the basic decisions of policy on which representative government rests.

When asked to assume this obligation, many citizens may raise the query as to where they are to secure such information. Of course, the press, the radio, and the public library at once come to mind. They are within reach of the majority of citizens, although there are undoubtedly many instances where they are not available. It may be objected that newspapers have their own selfish desires and consequently color the news to fit their own interests, so that information derived from such a source would be inaccurate.

**Importance
of Up-to-
date Infor-
mation**

**Sources of
Information**

Admitting that such is the case, there is a considerable amount to be learned, for the bias is likely to be confined to certain items and sometimes is so apparent that it would not mislead anyone. The federal requirement that broadcasting stations must devote at least 15 per cent of their time to educational programs necessitates a good many broadcasts which are of value in this connection. Even the most modest library is likely to have on its shelves books and periodicals which afford assistance to those who are interested in learning about public affairs.

More and more the government itself is realizing its own obligation in connection with an informed citizenry. A few years ago there was scarcely a government department that maintained even the simplest of press bureaus, but at present most of the sizable agencies of the Federal government include such a **Governmental Reporting** service. Some of the work of these bureaus may not be as well done as it might be; there has been a complaint among newspapers that the departmental press bureaus lack news sense and consequently expect the newspapers to run stories that are neither timely nor interesting. Nevertheless, a beginning has been made in this field. The President himself seeks to inform the citizens of some of the national problems through his radio fireside chats and his frequent meetings with the representatives of the newspapers and press services. The heads of the major departments also have their regular days for being interviewed by the press.

For many years it has been the habit of federal departments as well as a good many state and local governments to issue formal printed reports. Some of these have dealt with special problems of **Recent Progress** one kind and another; many others have been of the annual variety. In general, these reports have been forbidding in appearance, lacking in organization, and unilluminating in content. As a result they have not been widely circulated and even those who took the trouble to secure them have in many cases given them little or no use. During the last twenty-five years very encouraging progress has been made by some government units or departments in issuing reports.¹

¹ In this connection students are referred to the following: National Committee on Municipal Reporting: *Public Reporting*, Municipal Administration Service, New York, 1931; H. C. Beyle: *Governmental Reporting in Chicago*, University of Chicago Press, Chicago, 1928; Wylie Kilpatrick: *Reporting Municipal Government*, Municipal Administration Service, New York, 1928; *National Municipal Review*, annual articles on reporting by Clarence E. Ridley beginning in 1927; Urbanism Committee, report on *Urban Govern-*

Instead of pages and pages of uninterpreted, uncorrelated, and hence, meaningless statistics, these newer reports use well-written summaries, charts, photographs, and diagrams. The attractiveness of the binding and the quality of the paper have received attention. An attempt has been made to get the reports into the hands of citizens.

The records of cities such as Milwaukee and Cincinnati have been impressive: circulation of their city reports has been wide and there is evidence that large numbers of citizens have familiarized themselves with the contents. States have not done so well, although it is only fair to give them credit for improvement.¹ The record of the Federal government is spotty in this respect. Certain departments continue to issue the old-type of report, which, whatever else may be said about it, certainly makes no contribution to an informed citizenry. On the other hand, some of the reports recently issued by federal agencies are excellent in every respect and serve a very useful purpose in acquainting the citizen with certain aspects of the national government.²

Some attention has been paid to visual aids by government departments. The Department of Agriculture, for example, has prepared films dealing with soil erosion and other national problems.³ Several agencies have prepared exhibits which have been sent on tour. In a number of instances charts have been printed in considerable numbers for circulation among interested persons.

There are those who maintain that the government has no business attempting to inform the people of its objectives because such efforts fall within the category of propaganda.⁴ To what extent this charge is borne out by the facts is somewhat difficult to determine. There can be little doubt that some of the material has been prepared for the purpose of influencing large numbers of people—the soil-erosion movie and photographs would seem definitely to belong to such a class. On the other hand, many formal reports

ment to the National Resources Committee, 2 vols., Government Printing Office, Washington, 1939, Vol. I, part III.

¹ The *Indiana Yearbook* is one of the better state reports. It is issued annually and has made important improvements recently, although many of its reports are of the old statistical variety.

² See the reports of the National Resources Committee on Urbanism for example.

³ "The River" and "The Plow that Broke the Plains" received high praise as documentary films and were placed by critics among the best examples of motion-picture art.

⁴ Particularly has this accusation fallen upon the publications of T.V.A., in part because their tone justified it, but largely because of antagonism to the program itself.

cover such a wide scope and appear so long after issues are immediately vital that there seems little basis for the assertion that they have an ulterior purpose. Inasmuch as the officials who oversee the preparation of the reports are human, it is natural that they should wish to have their departments appear in as favorable light as possible. Altogether there is not nearly enough evidence to justify a conclusion that the reporting is not useful. Even where there is a definite end in view which involves action, as in the case of soil erosion, there may be unquestioned justification.¹

ACTIVE SERVICE FOR NATIONAL DEFENSE

It has been generally agreed that citizens of the United States are obligated to bear arms in defense of the country during times of emergency. Whether this calls for service outside of the borders of the United States has been variously argued. Some place the dividing line on whether the armed forces are used for defensive or offensive purposes, but in these days it is difficult, if not impossible, to determine such questions objectively. If the present world conflict has demonstrated anything, it is that taking the offensive against an enemy may be the best defense. To wait for actual invasion may mean that successful defense is out of the picture. In cases where citizens have religious beliefs which conflict with military service the authorities have ordinarily been disposed to permit substitute activity of a nonmilitary character.² However, in the case of naturalized citizens the Supreme Court has laid down the rule in the *Schwimmer* and *MacIntosh* cases that those seeking citizenship through naturalization must be willing to bear arms in defense of the United States irrespective of any religious or conscientious beliefs.³

With modern warfare so largely dependent upon industrial efficiency, there has arisen the question as to whether the services of labor and capital are not just as obligatory as enlistment in the armed forces. It is very difficult to make a case for military service on the part of young men, especially at the rates of pay which are

**Service in
the Armed
Forces**

**Labor and
Capital**

¹ See Chap. 12 for additional discussion of this problem.

² During World War I those conscientious objectors who were willing were given quartermaster jobs. Those who refused to engage even in such activity were ordinarily sent to prison. Because of the subsequent criticism aimed at this treatment, the Selective Service Act of 1940 not only permits partial objectors to be assigned to the quartermaster and related corps, but even allows the most adamant to serve, at their own or a church's expense, in conscientious objectors' camps, doing work similar to that done by the C.C.C.

³ *United States v. Schwimmer*, 279 U. S. 644 (1929); *United States v. MacIntosh*, 283 U. S. 605 (1931).

currently in force, when plants, man power, and money are not drafted although they are just as basic to successful national defense. Yet labor raises a hue and cry lest the wage standards which have been won after so long a struggle be jeopardized, while capital is always seeing the bogey of government ownership when temporary control is suggested and insisting on a "fair profit." A telling objection to any general drafting of industrial plants is that the government has so many duties to perform that it would in all probability be less capable of running the plants than the private owners. In the case of service in the armed forces there is, of course, no such argument. The very least that might be expected is that capital should put itself at the service of the government with no more than a normal rate of profit required and that labor should then satisfy itself with a normal wage. The strikes in the munitions plants during 1941 certainly placed a section of organized labor in an unenviable light as far as meeting its obligations as citizens was concerned. Although the plants of industrial concerns may be left in private hands, the obligations of citizenship would require refraining from unusual profit-making, the running of plants as efficiently and economically as possible, and the maintenance of prices at the lowest possible level.

FINANCIAL SUPPORT OF THE GOVERNMENT

All governments require sizable sums of money for their operation, which must be derived in the last analysis from the taxpayers. It is **Payment of Taxes** a well-established obligation on the part of citizens to pay the various taxes which are levied on them. Since taxes are compulsory, it might seem that such an obligation would require very little moral will on the part of citizens, but there are constant temptations to tax-evasion practices, the resistance to which is a genuine responsibility. Influential politicians have often made use of their positions to secure low assessments and in some cases have escaped the payment of taxes altogether. In the case of income taxes there is the failure on the part of some, risky as it may be, to report all income. Unscrupulous persons with large wealth have sold securities to their wives or friends in order to take advantage of provisions in the law relating to stock losses. It has been a fairly common practice for persons with large incomes to employ the wiliest of lawyers to discover loopholes through which they may escape with substantial savings. In certain localities tax strikes have been staged. If these are aimed at

bringing pressure on a corrupt and irresponsible administration, they may be justified; otherwise they are not in keeping with responsible citizenship.

One of the most insidious temptations which taxpayers have to confront, especially during these difficult times, has to do with the substitution of borrowing for taxation. With taxes already high and the public expenditures enormous, there is the problem of how much to raise through taxation and how much to finance through borrowing. It is rarely pleasant to pay taxes and tomorrow is always another day.¹ Consequently citizens are prone to ask their congressmen to keep the tax rate down within reasonable limits and to borrow the remainder of the cost of government. There are several schools of thought in the matter of the justification for borrowing and the extent to which such a practice may safely be carried. For that reason it is difficult to lay down the absolute rule that citizens should shoulder backbreaking taxes rather than have the government finance a part of its expenditures through borrowing. Nevertheless, the least that citizens can be expected to do is to face the problem squarely. The imposition of too heavy taxes might paralyze the economic system; on the other hand, the piling up of an enormous debt to escape the unpleasantness of current tax burdens involves the dangers of severe inflation, debt repudiation, and the scaling down of the debt by honoring only so much per dollar, which in turn threaten the security of large elements of the population which depend upon life insurance, savings accounts, and old-age annuities.

In ordinary times public securities can be absorbed by banks, life insurance companies, and other large investors and consequently the rank and file of citizens are not obligated to purchase government savings bonds, national defense stamps, and other types of securities. However, during times of emergency, when the need for borrowing becomes great, such an obligation presents itself. This is not so much because the government cannot raise funds from other sources as because it is desirable to have large numbers of citizens feel the responsibility which comes with the ownership of public securities. Likewise, when the debts are paid, there is less danger of dislocation of the economy if large amounts are held by individuals rather than by financial corporations alone.

**Pressure in
Favor of
Borrowing**

**Purchase
of Public
Securities**

¹ The author has met only one person, an Iowa farmer, who maintained that he enjoyed paying taxes.

THE "GIMME" CONCEPT OF GOVERNMENT

In hurling insults at the government of the United States Adolf Hitler and his associates have frequently pointed to the extreme selfishness which large numbers of American people display. **Individual versus Public Welfare** Hitler maintains that the government of the United States is an empty shell which could easily be overthrown because the people, busy filling their own pockets and using the government for their own ends, do not contribute as generously as they can toward a strong government or support public policies which look toward the general welfare. How much truth there is in these assertions, it is very difficult to ascertain. With the lack of confidence which is generally exhibited toward anything which originates from Hitler, Americans like to disregard these charges entirely. Yet even a Hitler may be expert in seeing the weaknesses of his adversaries—at least he has demonstrated remarkable ability along those lines in the case of the several European countries. There is, indeed, a good deal of evidence that one of the most serious shortcomings in the United States is the "gimme" concept of government which is held by so many citizens.

A study of the pressures which are exerted more or less constantly on various agencies in Washington reveals a depressing situation.¹ For every telegram, letter, or personal call from those who seek the general welfare of the country, there are dozens or even hundreds from the seekers of special favor. **The Situation in Washington** The manufacturers want a high tariff; the farmers ask for legislation giving them more than market prices for their products; the labor organizations demand minimum wages, maximum hours, collective bargaining, and other special privileges; the veterans appeal for pensions; and so it goes. Hundreds of pressure groups, with hordes of highly paid agents and substantial treasuries, descend on Washington to exert every influence that they can bring to bear in order to get legislation, orders, decisions, and other favors from the government, regardless of whether these may be for the best interest of the American people.

In the state capitals the scenes are similar. The speaker of the House of Representatives of a midwestern state at the conclusion of the legislative session of 1941 publicly denounced the menace to his state of the armies of special privilege seekers. **The Problem in the States** He declared that the legislature was seriously handicapped

¹ See Chap. 11 for a detailed discussion of pressure groups.

in its functioning by these groups and suggested that a rule be adopted which would reduce the number of bills to be introduced biennially in his legislature to two hundred.

The situation may be less serious than it appears on the surface, but it is a real problem. Fortunately, some of the desires of the interest groups although selfish are still not direct threats to the public weal; otherwise the country might have been ruined before this. There was some indication during the middle 'thirties that these pressures had diminished, but they have shown renewed vitality more recently. The most promising method of attack on the problem would seem to be that of correcting as far as possible the notion which so many of the citizens have of the purpose of government. As long as they hold the "gimme" concept, it will be exceedingly difficult for the government to act for the best interests of the country as a whole.

Summary

TOLERANCE

In a government which is based on democratic principles an attitude of tolerance on the part of the citizens is almost essential. This is especially the case in a country which is made up of as many diverse racial, religious, and cultural groups as the United States. If Anglo-Saxons are pitted against Latins, blacks against whites, gentiles against Jews, Protestants against Catholics, there will be strife and bitterness rather than harmony and cooperation. The energy which is required for effective operation of the government will be dissipated in the fruitless bickering of groups, with the result that there will be political weakness rather than political strength. It is not always an easy matter for citizens to display tolerance toward the aspirations and beliefs of fellow citizens. At times the fury of class struggle has reached a high degree of intensity and the country has been badly split. A century ago there raged the controversy over slavery, which threatened the very existence of the nation and from which the southern states scarcely recovered in fifty years. More recently there has been the wildfire of the Ku Klux Klan which swept over the country with cataclysmic speed and force, leaving in its wake blasted churches, divided communities, and corrupted governments. It is easy for Americans to point with horror to the inhuman Jew-baiting of the Germans and the savage stamping out of the kulaks, or property-owning peasants, by the Soviet Union; but it is not so pleasant to examine our own record of treatment of the

Special Importance in a Democracy

Negro, the Mexican, the Japanese, and certain other racial groups within our borders. Almost every citizen of the United States can prate of the Jewish atrocities in Germany; it is interesting to note that the Germans can reel off statistics in turn relating to the lynching of Negroes in the United States. Much as we might like to assume that tolerance can be taken for granted in the United States, a cold examination of the facts indicates that it is an obligation which citizens must constantly strive to achieve.

In dealing with the importance of tolerance it should be clearly and emphatically pointed out that *tolerance* does not mean *indifference*. In the thinking habits of all too many citizens of the United States, the two are synonymous. In those instances in which the activities of groups in our midst are aimed at the destruction of the United States, there is no obligation to close one's eyes. Indeed in such cases the obligation is the very reverse. Tolerance involves an admission that absolute truth is rarely attained and that consequently there are diverse beliefs which, although arising out of different backgrounds, nevertheless possess some degree of merit and logic. In addition, tolerance requires an effort to understand the aspirations of fellow citizens who hold different political, social, and economic views. When tolerance degenerates into indifference, it becomes a serious liability rather than an asset. There can be little doubt that the widespread corruption which has characterized certain units of government at times has in large measure been the result of indifference on the part of the citizens. Indifferent citizens at best make for inefficient and irresponsible government; at worst they contribute more generously than they usually realize toward graft and other governmental perversions.

VOTING

Most of the obligations which have thus far been discussed attach to all citizens irrespective of age, residence, or any other qualifications.

An Obligation Only when Granted In the case of voting this is, of course, not the case. It is related that Andrew Jackson as a youth presented himself at the polls to vote, only to be informed by the officials that the age of seventeen years did not entitle even male citizens to exercise that privilege. Whereupon Jackson returned to his home, seized a gun, returned to the polls, and compelled the election officials to permit him to vote. Apparently he acted on the supposition that he

had a right to wield the franchise regardless of age. Citizens under the age of twenty-one do not, of course, have such an obligation; nor do those who lack residence or other qualifications specified by law. However, the situation is quite different in the case of the millions of citizens who meet the legal requirements. A popular government presupposes the general participation of citizens; when many ignore such an obligation, there is at best weakness and at worst disintegration.

Despite the fact that the suffrage was bestowed upon only the favored few during the early years of the republic and although it required long years of struggle to broaden the grant to all adults of both sexes, there has been a considerable disposition on the part of large numbers of citizens to remain away from the polls. In local elections it is not uncommon to have fewer than one-half of the qualified electorate actually take part in the balloting²—at times no more than one-fourth or one-third of the voters have cared enough to vote. In the general elections which involve the choice of presidential electors the situation is more encouraging, but even so it has been none too good at times. For example, in 1920 less than twenty-seven million persons out of a total population of more than one hundred and five million actually took part in the presidential election, although there were more than fifty-four million who belonged to the age groups twenty-one or over. Some of those who possessed the age qualification lacked residence and other necessary requirements and of course could not vote. However, after making allowance for all of these, the record remains poor indeed, with scarcely more than half of those qualified actually taking the trouble to cast ballots.¹ It is only fair to note that this election reached the low-water mark and that there has been substantial improvement since that time.² Although the results in 1924 were approximately the same as those of 1920, 1928 saw an increase in the total votes cast to more than thirty-six million, while 1932 witnessed an even more impressive showing of almost forty million votes. In 1936 the total vote fell just short of forty-six million, while in 1940 a record for the century was established by the casting of more than forty-nine million votes. Of course, the population of the country was increasing during those years and hence the percentage improvement was somewhat less than the aggregates would show.

Nonvoting
in the
United
States

¹ The exact percentage has been calculated as 52.4.

² For statistics covering 1856 to 1920, see A. M. Schlesinger and E. M. Erickson, "The Vanishing Voter," *New Republic*, Vol. XL, pp. 162-167, October 15, 1924.

Nevertheless, the percentage of those citizens twenty-one years and over voting jumped from just over 50 per cent to more than 80 per cent during the two decades—certainly an impressive increase.¹ How permanent such an improvement may be is, of course, a question, but for the time being at least the situation is not one of alarming character.

Despite the comparatively widespread interest now exhibited by adult citizens in voting, the record in the United States is by no means **Compulsory Voting** equal to that of the totalitarian governments, where anything under 90 per cent is considered very humiliating indeed and voting records of 99 per cent have actually been established. However, comparison between voting in the United States and Germany, say, means little because of the force exerted on the German citizenry by such savage instruments of government as the Gestapo; moreover, after a vote has been cast by a German, it has little significance both because of the matters voted on and because of the daring required to refrain from a favorable vote. Nevertheless, there are those in the United States who believe that it might be well to introduce compulsory voting. People have to pay taxes or incur a penalty, the argument goes, so why not compel them to vote or subject themselves to a fine? On the other side, it is maintained that compulsory voting only "leads the horse to water, but cannot make him drink," so to speak. Opponents declare that the chief result of compulsory voting would be increased election expenses due to the greater number of ballots and the increased voting facilities required. Pointing to the experience of Australia, Belgium, and Switzerland with compulsory voting these same critics emphasize the large number of blank ballots which would be handed in.² There is some reason to believe that compulsory voting might lead some citizens to acquire a sense of responsibility toward and even an interest in government, for pride would compel them to do more than meet the formal requirement. In principle at least, it is highly desirable to bring as large a proportion of qualified voters to the polls as possible. Yet viewing the matter concretely there is the question of what advantage would be gained

¹ A good deal has been written on nonvoting. The first extensive study, which, however, deals with a local election, is C. E. Merriam and H. F. Gosnell, *Nonvoting; Causes and Methods of Control*, University of Chicago Press, Chicago, 1924. A more recent book which has especial interest in the case of California is C. H. Titus, *Voting Behavior in the United States*, University of California Press, Berkeley, 1935.

² For an interesting article on this subject, see W. A. Robson, "Compulsory Voting," *Political Science Quarterly*, Vol. XXXIII, pp. 569-577, December, 1923.

from blank ballots or indeed from valid ballots cast by those who know little and care less about public affairs.

Indifference is not the only cause of nonvoting, although Professors Merriam and Gosnell found it to be outstanding in the Chicago municipal election of 1923. In contrast it may be pointed out that later studies made of the smaller cities of Delaware, Ohio, and Greencastle, Indiana, assigned indifference a less important role.¹ It is probable that a not inconsiderable part of the lack of interest in Chicago was due to the rather recent introduction of suffrage for women.² In addition to indifference, there is the lack of legal residence which disqualifies numerous persons who have moved their places of residence shortly before election day. With the states ordinarily requiring one year of residence within the state,³ as well as shorter terms in counties and precincts, those who have changed their residences recently necessarily are temporarily deprived of their suffrage. Absence from home disfranchises certain persons, particularly in those states where no provision is made for absentee voting. Then there are such factors as illness, the infirmities of age, incarceration in prisons or asylums, business or domestic cares, and bad weather. Failure to register plays an important part in nonvoting, although with the spread of permanent registration it is of less consequence than it once was. Finally, there is the situation which characterizes certain of the southern states. These states are so strongly wedded to the Democratic party that actual choices of public officials are made at party primaries rather than at general elections. Since the final election is almost purely a formality, there is little incentive on the part of voters to turn out. Consequently, there are the amazing voting records which sometimes show more than 90 per cent of those qualified in the nonvoting class. Then, too, it has been the custom of certain southern states to put up such barriers that almost all Negroes are disfranchised. In states in which Negroes account for something like half of the entire population this, of course, has a very noticeable effect upon the voting record.⁴

¹ See B. A. Arneson, "Nonvoting in a Typical Ohio Community," *American Political Science Review*, Vol. XIX, pp. 816-825, November, 1925; and Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, pp. 148-151, survey made by Harold Zink and Harry W. Voltmer.

² The record was especially poor among women, who had enjoyed the franchise only since 1920.

³ Requirements range from two years of residence to only six months.

⁴ See Paul Lewinson, *Race, Class, and Party*, Oxford University Press, New York, 1932,

PUBLIC OFFICEHOLDING

Naturally, not all citizens can expect to hold public offices or positions, for even with the rapid expansion of public pay rolls to a point where perhaps five million persons depend directly upon the federal, a state, or a local government for livelihoods the majority of citizens are engaged in private business enterprises or professions. It can scarcely be maintained, then, that citizens have a general obligation to hold either public offices or positions. But they may be expected to look with respect upon such employment, for otherwise the prestige value of such positions will be low and well-qualified persons will not be likely to desire them. Professor Leonard D. White has pointed out the importance of such an attitude in his monographs *Prestige Value of Public Employment*.¹ Anyone who is familiar with the government of England will be aware of the role which social approval has played in attracting the most promising graduates of Oxford and Cambridge both to political careers and the administrative branch of government. If the general opinion is that only crooks and ne'er-do-wells are suited to be state assemblymen or justices of the peace, it is not strange that the well-qualified will shun such positions and that the proportion of the incompetent and unscrupulous will be high. There is no logical reason why public service should be looked down upon in the United States, for its importance is very great; yet such has been the case in many localities and in many periods.

While not all citizens may have the direct obligation to serve in public offices or in public positions, at certain times there may be a positive obligation. In periods of national emergency it is generally admitted that the Federal government has first claim on persons who are particularly qualified to direct its programs. Consequently, numerous men of affairs will temporarily surrender their private business connections and take over responsibilities of a public character, sometimes even to the extent of becoming dollar-a-year men. But this obligation likewise exists when there is no so-called "national emergency," although unfortunately it is not so commonly admitted. When there is a paucity of suitable candidates for seats on a city council, a state legislature, a county board, or a school

for a detailed study of the status of Negro voting. The recent cases decided by the Supreme Court involving Negroes point in the direction of wider Negro participation.

¹ University of Chicago Press, Chicago, 1929; and University of Chicago Press, Chicago, 1932.

board, it is the duty of qualified citizens to offer themselves for such service, even if private business may be more profitable or personal inclination may shy away from such activity.

JURY SERVICE

Juries may be less important today than they were half a century ago, but they continue to perform an important function in the administration of justice. The grand jury may disappear from the scene, as it has in England; more and more parties in both civil and criminal cases may prefer to have the judge decide the facts as well as apply the law. However, as long as juries are retained—and there is little evidence that they will ever be abandoned in many criminal cases—they deserve the services of intelligent and honest citizens. The laws of many of the states exempt so many occupations from jury service that it is particularly important that well-qualified representatives of the remaining classes acknowledge their obligation in this respect. In this connection it may be pointed out that public attitude also plays a part, as it does in officeholding. Not every citizen is obligated to undertake jury service, but it may be reasonably expected that all citizens will contribute by refraining from belittling the functions performed by jurors. When reputable members of the community refer with scorn to such an instrumentality of government, it becomes increasingly difficult to obtain competent jurors.

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CHAPTER VIII

THE ROLE OF POLITICAL PARTIES

THEIR RISE

ALTHOUGH political parties have long been a very important element of the American system of government, they were not recognized by the men who framed the Constitution. That is not to say that they were unknown at that time, for they had operated in England for some years prior to 1787. But their general reputation among the leaders of the young republic was not good; they were associated with strife, division, chicanery, personal manipulation, rather than with unity and responsibility. Attitude of
the Fore-
fathers The forefathers were, of course, anxious to do everything possible to strengthen the fabric of the new commonwealth and consequently gave no approval to such weakening influences as they considered political parties to be. Hence the Constitution itself makes no mention of parties.

Nevertheless, the men who constituted the convention of 1787 expressed in no uncertain terms their sentiments on the subject in their public addresses and writings, warning their fellow countrymen to beware of these insidious dangers. Perhaps no one who enjoyed a position of influence was more determined in opposition than George Washington himself. That attitude on the part of men of affairs and maturity strikes the present-day student as very strange, to say the least, for it has now long been apparent how essential political parties are in a popular government.

In defense of the founders it may be said that they lived in a period when such groups were just beginning to be tolerated. For centuries the watchword in public affairs had been unity—any difference of opinion had been regarded as disloyalty, even treason. Of course, there never was a time when everyone saw eye to eye on every public question, but those who differed from the monarch or tyrant either kept their opinions to themselves or courted arrest and punishment, even to the loss of their heads. It was in England that the very important concept was evolved, which recognized legitimate opposition not only

in individual cases but on the part of organized groups. The very name applied to the minority parties in England today indicates the early stress that was placed on the validity of a division among the citizens—they are still referred to as “His Majesty’s Loyal Opposition.” Had the forefathers lived in England and witnessed the actual operation of political parties, it is possible, even probable, that they might have held a quite different opinion. But, separated by an ocean in a time when communication facilities were far from good, they heard mainly of the sensational iniquities and little of the usefulness involved in these organized groups of citizens.

But if the founders had so little use for political parties that they did not deign to mention them in drafting the Constitution, their warning did not long prevail. Although the two administrations of Washington remained as aloof from political parties as was practicable, even Washington had to recognize the existence of such groups and included both Alexander Hamilton, the leading Federalist, and Thomas Jefferson, the most influential Antifederalist, in his cabinet. By 1800 the party system had ensconced itself quite firmly in the government, even to the extent of necessitating the addition of the Twelfth Amendment so as to make the electoral-college method workable. It scarcely needs to be added that since that time political parties have played a very important role in the United States. Sometimes they have been more vigorous than at others: national emergency may cause their temporary eclipse; an independent President may be able to transcend them for a time; but while men may come and go and issues may emerge and subside, the party system has gone on generation after generation.

The first political parties, which seem very weak and unorganized when set alongside of modern groups of the same type, did not prove too enduring. The Federalists and Antifederalists, or Jefferson Republicans, gave way to the Whigs and Democrats; the Whigs in the middle of the nineteenth century were supplanted by the Republicans. Moreover, there were developments taking place within party groups, which had the effect of bringing about substantial changes, often within a short time, again over a period of years. For example, it is doubtful whether the Democrats of the early nineteenth century would recognize as kindred spirits the Democrats of today or that the Republicans of Lincoln’s time would see eye to eye with the Republicans of the last decade. The claims of

**Early Rise
of Parties**

**The Suc-
cession of
Parties**

Democratic orators of spiritual descent from Thomas Jefferson may sound impressive, but they are perhaps no more sound than the similar arguments of their opponents who cite Alexander Hamilton, Abraham Lincoln, or Theodore Roosevelt. Nevertheless, despite the changes that have taken place, it may be pointed out that political parties in the United States have been more permanent than corresponding groups in most other countries. While the stability of English parties approximates that to be observed in the United States, in France, Italy, Germany, and Japan the shifting has been far more evident.¹

Although on several occasions it has seemed that there might develop more than two major political parties in the United States—for example in the 1850's and the second decade of the present century—and many political prophets have predicted the emergence of strong third parties, the party system has remained biparty in character. Here again the experience of the English has been similar, while the records of France, Germany, and Italy, with their multiple- or single-party systems, have been strikingly diverse.²

**Two-party
Character
of the
American
Party Sys-
tem**

Along with the two major political parties there has always been a varying number of minor parties. Some of these have carried on over long periods, while others have been active only in a single election. The Prohibition party has been more or less on the scene since 1872; the Socialists go back to the 1890's; the Communists have been organized for something like twenty years. On the other hand, the Free Soil party largely exhausted itself in 1848; the Progressive party rapidly disintegrated after 1912; and the Union party which came into the limelight during the campaign of 1936 is now almost forgotten. Among other minor parties may be mentioned the Know Nothings, identified with the 1850's; the Greenback party of the 'seventies; the Populist party which was active in the closing years of the nineteenth century; the Farmer-Labor party, organized about 1920; and the LaFollette Progressives, which appeared particularly in 1924.

**Minor
Parties**

¹ Many parties in France under the Third Republic, for example, existed only two or three years. The majority of those active in any election could ordinarily look back on no more than a decade of existence, while the oldest were founded only about the beginning of the present century.

² The number of parties in these countries has varied from time to time. Italy and Germany are now associated with a single party, while France and Japan are trying to get along without any parties at all for the time being. Under other regimes these countries have had a dozen or more fairly influential political parties active at one time.

The influence of these minor parties has not been very direct, for they have seldom been able to elect any sizable number of national officials, although on occasion they have fared better in a given state.¹ It may be doubted whether many of these political groups have exerted any appreciable influence at all; however, some of them have been a far larger factor in American affairs than the votes which they have polled or the officials they have elected would show. For example, the Socialists, despite efforts stretching over almost half a century, have never come within striking distance of electing a President or of having even a sizable representation in Congress—ordinarily they have not had a single member. Yet they can claim with some accuracy that virtually every plank in their original platform, drawn up at about the turn of the century, has been enacted into law. They have not, of course, been able to put such a program through, but they have exerted sufficient influence to cause the two major parties to take over these planks themselves. Likewise, the Prohibition party has never achieved even moderate success at the polls, but its efforts together with the activities of the Anti-saloon League led in large measure to the Eighteenth Amendment and its accompanying legislation.

FUNCTIONS OF POLITICAL PARTIES

Every resident of the United States knows something about political parties, for their activity is such that even the most indifferent of persons cannot be oblivious to their existence. Yet it may be doubted whether most citizens have at all a clear-cut idea of the functions which they perform. Considering the fact that some of the functions are not handled very successfully, perhaps such a state of unfamiliarity is not surprising. Nevertheless, in light of the great publicity achieved and the large amounts of money spent by the major parties, a reasonable idea of the *raison d'être* might be expected. Certainly no informed student of American government can afford to be negligent on this point.

Four important functions have commonly been associated with political parties in the United States. To begin with, they exercise a very important role in connection with the election of public officials.

¹ The Farmer-Laborites have dominated several states at times, the most important being Minnesota. The LaFollette Progressives have enjoyed a large measure of success in Wisconsin.

In the second place, they are supposed to give the voter an opportunity to select issues which he wishes put into practical operation or effect by the government. In the third place, they are charged with assuming a considerable measure of responsibility for the satisfactory conduct of government. And finally, they are assigned the task of stirring up the interest of the citizens in public affairs, getting the voters to the polls, and keeping the political pot boiling. These are sufficiently important to warrant further examination.

Under the provisions of the original Constitution voters were apparently expected to go to the polls without consulting their neighbors and to cast their ballots for the person or persons whom they considered best qualified to hold public office. Theoretically such an arrangement would, of course, be fine, but in practice it scarcely works. Given a New England town meeting, it may be feasible to have local officials chosen on the basis of the free choice of the voters; in certain of the Swiss cantons such a plan seems to work somewhat satisfactorily. But if thousands, to say nothing of millions, of people belonging to a single unit of government have the responsibility of choosing its officials, some organized assistance is necessary. Try the experiment of having the members of a class vote for some office. Even if the choice is to be limited to the individuals who constitute the class, a vote taken without caucuses or group discussion will usually show that at least half of the members receive one or more votes, while no one polls more than a small proportion. If this unguided method is extended to a state, a congressional district, a county, or a city, there is little likelihood that any choice could be made that would represent any significant proportion of the voters.

**Nomination
of Public
Officials**

Under a system such as ours, public officials are supposed to be the choice of a majority of the people; while this may not be possible, at any rate they should be supported by a sizable fraction. In order to avoid confusion or even chaos, some arrangement has to be made which will permit the voters to indicate their choice among a small number of candidates. The direct primary has been devised to perform such a service, but it is the political parties that do most of this work, even under the direct-primary plan. The parties designate their candidates for the various offices; the voter then supports the particular candidate whom he regards as best. Under this arrangement the holders of office may not have the support of a majority, but except in the

southern states where final elections are regarded as mere formalities,¹ they will usually receive the votes of a substantial plurality.

There is no lack of interest on the part of political parties in the making of nominations; indeed it sometimes seems that their sole concern is selecting candidates for office and seeing that they are elected. Their frequently criticized weakness is not the failure to put up candidates, but rather the poor quality of the candidates selected. Candidates whose primary aim is their own aggrandizement, candidates who have no compelling interest in the problems of government but only represent selfish interest groups, candidates who lack common decency and honesty, and candidates who have neither the intelligence nor the training to perform their public duties, are all too commonplace. At times it seems that the parties have gone out of their way to pick inferior candidates, but ordinarily it is a case of not using the best judgment. The party organizations often become the creatures of political bosses, political machines, selfish-interest groups, and other usurping elements, with the result that candidates are chosen who will do the bidding of these powers. It is obvious that the nominating function breaks down under such circumstances, for popular government cannot prosper with officials of this character at its helm. The machinery which political parties employ for this selection is none too satisfactory. The traditional convention is usually too large, too unorganized, and too rushed to give adequate attention to the nomination of candidates—that is true even when the delegates are free creatures rather than the minions of political bosses. Back-room sessions of party leaders get away from the unwieldiness of conventions and may be disposed to spend considerable time, even to all-night meetings on deliberations. But they are frequently irresponsible, motivated by a desire for power or financial profit, and characterized by the tactics of horse trading.

In defense of the party system it may be pointed out that there are many factors beyond party control which hinder their most efficient working. For instance, state laws provide for the nomination of candidates in many places. Likewise, the problem of finance is a difficult one which leads to assessments of anywhere from

¹ Where only one party exists for practical purposes, actual choices of public officials are made at party primaries. Hence there is no purpose in taking the final election seriously, for it merely ratifies the choice of the primary.

a few dollars to \$10,000 or more on those who wish to be considered. Also party members are indifferent and permit the party machinery to be taken over by political bosses and machines. Frequently, local pride is such that geographical representation has to govern selections irrespective of other qualifications. The popular bias against city dwellers is often so pronounced that only those who have been connected with farming can be elected, thus effectively barring able aspirants with urban background. Men of means or who have succeeded notably in the management of business are sometimes ruled out because of the antipathy which large numbers of voters display toward such persons. Since the party will be in a sad condition if it does not elect its candidates, it must take no unnecessary chances in putting up candidates who might not attract votes.

In conclusion, let it be said that much of the failure on the part of political parties in this respect goes back to the character of the people. If people are so wrapped up in their own private business, **Character of People** family, or social life that they can find little or no time to interest themselves in public affairs, it will not be surprising that political bosses and machines scuttle the parties. If voters will support any candidates put up by a party, regardless of their qualifications, there will be little incentive on the part of the party to do a good job of nominating. If election is determined by such improper factors as religion, race, occupation, and place of residence, stupid choices are likely to be in order. Everything considered, it may be surprising that political parties are as responsible as they have shown themselves to be. In those sections where the public sentiment demands better handling of this function, it is encouraging to note that it is generally forthcoming.

In a democratic government it is essential that there be some means by which the people can indicate their opinions on public questions. Unless this is provided, a government can be regarded as **Presentation of Issues** democratic only in name. Several avenues are open for such expression of opinion in the United States, but the most important is the occasion offered at election time. Individuals may write letters or send telegrams to their congressmen or legislators, often with considerable effect; however, this piecemeal technique plays into the hands of vociferous groups that may not be too sizable in actual numbers. Occasionally, measures are referred to voters for a "yes" or "no" answer. Individual candidates promise to work for certain items if elected to office, but they may be able to accomplish

very little, even if they attempt to carry out their commitments. However, if political parties take stands on far-reaching questions of a public character prior to a general election, they afford an opportunity for the electorate to indicate what it desires the government to do. The party which is given a mandate to take over the government may proceed on the assumption that the majority of people as represented by the voters favors a certain course. Thus the government takes on a popular character.

At times political parties have performed that function quite well, but during recent years there has been a decided tendency to straddle **Recent** issues, rather than to take a stand on them. This shirking **Record** of responsibility has weakened one of the chief props of democratic institutions in the United States and may fairly be regarded as a serious threat. Some critics have charged that there has been no actual difference between the Republican and Democratic parties since 1912. This assertion may be exaggerated, but it has considerable basis as a result of the reluctance of the political parties to commit themselves to a definite course. The lack has been met somewhat by a more direct attitude on the part of the President; never before has a President taken the people into his apparent confidence through fireside chats and messages or invited them to send him letters relative to their desires to the extent of President Franklin D. Roosevelt. However, valuable as this development may be, it does not take the place of the party presentation of issues at election time.

In consequence of the refusal of parties to take a definite stand on contemporary questions, there has been a tendency on the part of the electorate to recast the vague, straddling sentences of party **Individual** speakers and party platforms into more definite ideas. **Interpreta-**
tion Since voting, particularly in national elections, involves a choice between two supposedly opposing sets of ideas and between two supposedly opposing men, this tendency of the popular mind to translate evasive platforms into direct and to some extent oppositional stands is an almost inevitable development. It is the only means by which the people can make any choice at all. They obviously cannot choose between two men who claim that they support about the same middle position on all current issues. They must, at least those of the people who think about their votes must, have a basis for making a decision. The only way that seems to be open now is an individual interpretation of the positions of the parties. Naturally the average

voter makes many misinterpretations; hence when he votes he is quite possibly not voting for what he thinks he is at all. Moreover, the men he has helped to elect may themselves reinterpret their preelection statements in a very different fashion from the understanding which the voter had.

There have been numerous attempts to account for the poor record of political parties in this matter. Several keen students have built up a considerable case for the introduction of a multiple-party system, maintaining that issues are at present so complex that they cannot be divided into two sides. The substitution of three or four powerful parties for the present two would, according to these critics, make it feasible and probable that clear positions would again be taken on important public questions. Others declare that governmental policies have become far too involved for the ordinary citizens to understand and that consequently voters must pick out the candidates that seem to promise most, leaving them a free hand to do as they think best after election. President F. D. Roosevelt has made several public statements which might be interpreted as indicating that he holds such a concept.¹ Then it is alleged that the people are no longer interested in issues and that so few pay any attention to them that political parties have no incentive to take a stand. Both of these last assertions involve, however, an admission that popular government has either been rendered impossible by conditions of modern life or that the rank and file of the people have lost interest in democratic principles. Needless to say, both play into the hands of advocates of a totalitarian form of government for the United States. Finally, there are those who see in the present situation a striking evidence of the deterioration or dry rot of the very vitals of the political party system. They believe that issues could be found, that the people still would welcome them, but that the party leaders are so irresponsible and stupid that they refuse to perform their necessary public duty.

There is doubtless some truth in all of these explanations and conversely no single one of them is an adequate explanation. No serious student can dispute the complicated character of many of the issues of the day. To answer them by a mere "yes" or "no" may be impossible or at the very least unsatisfactory. Consider, for example, the question of whether the govern-

Why
Parties
Neglect the
Presentation of
Issues

Complicated
Character of
Current
Issues

¹ See the files of the *New York Times* for July-October, 1936.

ment shall pursue a more vigorous policy in regulating current business practices. A group of very conservative people regard any government regulation of business as entirely unjustifiable and even evil; they could indicate their positions by an emphatic "no." At the other extreme, there are those who declare that private business has proved so inept, corrupt, and selfish that it must be rooted out and replaced by complete government ownership and operation. They would doubtless find a plain "yes" quite sufficient to state their position. But in between these extremes the majority of the people arrange themselves in gradations—some wanting a little more government action, others desiring quite a good deal more regulation, and still others favoring very strict government regulation but not actual public ownership. It is evident that two political parties can scarcely present this issue in such a fashion that the rank and file of voters could express themselves with any degree of satisfaction. The introduction of the multiple-party system would at least in theory go far to correct this impasse.

Likewise, while one may not subscribe to the assertion that public problems have become too technical to permit the average man to have an opinion, it must be admitted that there is some basis for that belief. If the people are to take sides on an issue, the question must be clear cut and of broad character; if all manner of technical details are at stake and the basic principle one which involves expert background the people cannot be expected to furnish adequate guidance. Many of the current questions seem, however, to be of such a character that the general public might be expected to have a real contribution to make in arriving at a decision. For example, the problem of whether to continue a policy of large-scale borrowing is one which is no more technical than the problems which were presented to the American people during the nineteenth century. It will be the people who will have to pay the increased taxes or suffer the consequences which may eventually arise out of an enormous debt. Who is better fitted to decide such a question, then, than the people?

On the other hand, many problems are highly complex in nature and do not lend themselves to popular decision. After the people have decided that they want to slow up the borrowing process, it will probably be necessary for the tax experts to work out a scheme for raising additional funds, for the average man is not sufficiently informed on the details of public finance to say how the money

**Issues of
Broad
Character**

**Technical
Questions**

can be raised with least effort. If the people indicate that they prefer to run future risks rather than to bear heavier current burdens, then it is again up to the experts to suggest how the borrowing can best be handled, for the rank and file of the people have little or no experience in such details. After the experts have recommended, the decision can be left up to Congress and the President.

A third function of political parties involves the assumption of responsibility for the conduct of government. After election victory, a party takes the offices in the executive and legislative branches and proceeds to carry on the work of government. Since large numbers of individuals are involved, it is essential that some unifying influence be provided, lest chaos

**Assumption
of Responsibility
for
Government**

ensue. The most effective agencies for bringing about coordination over a period of years have been the political parties. They have established their caucuses in the legislative branches, appointed party leaders, and designated party whips. Their national and state committees have exercised an influence in bringing the executive and legislative branches into harmony, and the mere existence of a party alliance on the part of the executive and of the legislators is an important factor leading to unity of purpose and action in both state and national governments. Likewise, much of what coordination there is between state and federal activity is on the basis of the party relationship.

Not only have political parties attempted to focus the attention of all agencies of government on one goal, but they have been able to bring coercive pressure on certain officials who have tended to be derelict in their duties. After the voters have elected an official to office, they no longer have a very complete check on him—at least until the next election. If the official has no interest in running again; if the law does not permit him to succeed himself;¹ if he has already made such a fool out of himself that his future chances of reelection are nil, the voters are more or less helpless in compelling responsible conduct. Political parties sometimes find it difficult also to handle the officials whom they have nominated, but their avenues of control are far superior to those of the voters. Political parties may threaten political death, the withdrawal of patronage

**Control of
Public
Officials**

¹ Indiana and Pennsylvania do not permit their governors to succeed themselves in office immediately. There are cases where local officeholders are not eligible to succeed themselves.

rights, refusal of campaign support, impeachment, and even in the last analysis business boycott.

The record of political parties in this respect leaves something to be desired. Few governments in the modern world have had more cases of corruption and incompetence in office than the United States. We accord to ourselves the dubious and not deserved honor of having a monopoly on political bosses and political machines.¹ "Honest graft" thrives in our midst as if this were its native habitat. Yet the situation might be worse. After all the tales of graft have been recited, very few would proclaim such a condition to be the rule in government rather than the exception.² Moreover, we have made gradual improvement through the years, despite discouraging relapses which plague us now and again. Not all of the credit for what we enjoy belongs to political parties, but they have contributed appreciably in certain instances.

The most apparent activity of political parties is that of bringing out large numbers of voters on election day. In order to gain control of the government a political party must win a plurality of the votes which are cast; lest there be a slip-up a party wants as many voters out as possible, that is, as many as possible of those who are likely to support its slate. No political party is interested in large numbers of voters as an abstract principle; the big thing is winning the election, which requires getting out more voters than the other party. If an election is lost, the entire battle is lost, for every act of the party in the last analysis is judged by the results on election day. There is nothing sadder than a defeated party: the atmosphere surrounding its headquarters is more somber and depressing than mere words will indicate; it has little fuel to keep the fires burning until the next election; its task of enlisting popular support is usually a difficult one. In the last analysis there is never a valid excuse for losing an election, for as Boss Croker once clearly put

**Stirring Up
Interest
among the
Voters**

¹ American writers have frequently asserted that political bosses are peculiar to the United States. Actually they are to be found in several of the Latin-American countries, in China, and elsewhere.

² Now and then a state or a city will be controlled by a boss or group which is almost completely venal, but such regimes do not endure beyond a few years. The fact that the Tweed Ring, the Gas Ring, the Long machine, and other similar exemplars of corruption are given places of notoriety indicates that they are the exception rather than the rule. If the general condition were one of graft, then it would be the periods of reasonable honesty which would receive the publicity and be regarded as so colorful. That is not to say that there is not a certain amount of corruption during ordinary times, but it is not so widespread that it characterizes the system.

it: "He who excuses himself accuses himself." Consequently it is not strange that even a party which is in the saddle and seems assured of continued support will expend considerable effort in campaigning. This expenditure of energy and money—and both are required in great amounts—may turn out to be unnecessary, but it is never possible to tell exactly, until the votes have been counted. Then, if the campaign has fallen down, it is too late to retrieve victory; whereas if the party has been returned to power, any surplus expenditure of time and funds may be charged up to insurance or party defense.

To achieve their end and thus be charged with the running of the government, political parties make use of all sorts of techniques. Meetings of one kind and another are scheduled throughout the land in enormous numbers. Monster rallies will be put on in the largest auditoriums of metropolitan centers, with a galaxy of imported speakers, elaborate decorations, and varied publicity. In smaller places there will be less ambitious rallies, with second-rate celebrities, who are on a barnstorming circuit, appearing alongside of local political bigwigs. Finally, there are the almost countless neighborhood meetings in which the party workers and the voters can see the local candidates under informal circumstances. Public assemblies are supplemented by parades, during which the candidates greet the multitudes lining the streets, and brass bands jazz up the popular interest. All sorts of publicity make it difficult for the voter or indeed anyone who leaves his inner sanctum to lose sight of the approaching election. There are large and small placards, banners with flaring lettering, newspaper-display advertisements, personal cards, pamphlets, badges, ribbons, automobile stickers, lithographs, letters, and a hundred and one other devices to attract attention. Finally, there is the personal contact which the field workers of the party carry on so vigorously. Personal visitation, telephone calls, the intervention of business associates and friends, may all be used to reach the individual voter during the height of the campaign. On election day a tally is kept of those who vote, so that as the day wears on party workers can telephone those who have not put in an early appearance. Automobiles furnished by the party are available to transport aged and infirm voters to and from the polls.

**Techniques
Employed
to Bring
Out the
Vote**

There is some difference of opinion as to how effectively political parties perform this function of stirring up interest in public affairs among the voters. Much of the effort is of the "ballyhoo" variety; in

many instances the aim seems to be that of arousing emotions rather than imparting information or advancing logical arguments. The sensational character of some of the campaigning has more in common with the circus than with the serious realm of government. Moreover, there is not uncommonly evasion of issues and current questions, rather than a frank attempt to meet them.

**The Record
of Parties
in Stirring
Up Interest**

In defense of the political parties it must be stated that the lethargy and political ignorance among great masses of legally qualified voters is vast. Sensationalism seems to be necessary to attract large numbers of voters. Many will turn out for fanfare, entertainment, and rabble-rousing mudslinging, while a relatively small number will listen to serious attempts to present political issues. Were it not for the Herculean efforts of political parties, many observers believe that a very small percentage of voters would turn out on election day. On the other hand, critics assert that the hordes of those who respond to the showmanship, below-the-belt attacks, and irrational arguments of political parties on campaign have no contribution to make when they do cast their ballots. Whatever effect their efforts may have, political parties take this function seriously and bend every effort toward the waging of a vigorous campaign.

In view of the failure of political parties to put up superior candidates in many instances, their insistence on straddling the fence, and the superficial character of their attempts to discuss public questions, a good many public-spirited citizens have urged the abandonment of the party system and the substitution of nonpartisan elections. Very little has been done in this direction in the national arena, for there is no machinery available for nominating candidates for the presidency, other than that provided by the political parties. However, in state and local spheres the efforts of the proponents of nonpartisanship have been fairly successful, at least as far as formal abolition of political parties goes. Something like half of the cities of the United States nominally conduct their elections on a nonpartisan basis;¹ Minnesota and Nebraska specify nonpartisan choice of the members of their legislatures; California, Idaho, Montana, and North Dakota elect their judges under such a plan. It is maintained

**Nonpartisan
Elections**

¹ For a discussion of such a system in cities, see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, p. 172. In 1938, 862 out of 1686 cities with more than 5000 inhabitants elected councilmen on at least a nominal nonpartisan basis.

by the advocates of this system that the rather meaningless introduction of national parties and national issues into state and local areas is ruled out under an arrangement which does not permit party affiliation to be indicated on the ballot. Moreover, better chances are supposedly given to candidates who have superior qualifications but would not bend to the discipline frequently imposed by political parties. Political dishonesty, opportunism, and graft are minimized if not abolished by nonpartisan elections, it is argued.

Thus far we have had no definitive evaluation of the actual results achieved by nonpartisan state and local elections and hence it is difficult to assess their practical significance. The mayor of Buffalo has depicted the results in that city in the most glowing terms;¹ if his description is not an overstatement and similar accomplishments could be expected in other political areas, an excellent case could be made for the plan. However, in other places where nonpartisan elections have been tried, the results have not been impressive. Reports from Boston and Omaha leave little room for doubt that political parties have continued in control despite the formal provisions.² Pennsylvania and Iowa, after experimenting with nonpartisan election of judges, decided to go back to the traditional system. There is considerable evidence that nonpartisanship is often observed in a purely nominal manner and that political parties actually manage to function behind the scenes. If political parties put up slates of candidates, furnish their supporters with sample ballots which serve as guides in marking the official ballots, and after election command the allegiance of the officials chosen, it is difficult to see what gain has been made. As a matter of fact, if political parties are to control, it is preferable to have them operate in the limelight rather than behind the scenes.

**Evaluation
of Nonpar-
tisan Elec-
tions**

PARTY MEMBERSHIP

Inasmuch as political parties exist to a large extent outside of the Constitution and laws of the United States, the rules relating to membership are ordinarily formulated by the parties

**Formal Re-
quirements**

¹ See T. L. Holling, "Non-Partisan, Non-Political Municipal Government," *Annals of the American Academy of Political and Social Science*, Vol. CXCIX, pp. 43ff., September, 1938.

² V. Rosewater, "Omaha's Experience with Commission Government," *National Municipal Review*, Vol. X, pp. 281-286, May, 1921; and D. Stoffer, "Parties in Non-Partisan Boston," *ibid.*, Vol. XII, pp. 83-89, February, 1923.

themselves. In no case are they such as to eliminate large numbers of prospects, except for the Democratic party rule in the southern states regarding Negro membership. Unlike the National Socialist party of Germany, the Fascist party of Italy, and the Communist party of the Soviet Union which restrict membership to a comparatively select group of those who have proved their worth to the one-party, or the France of the Third Republic where only the most active political workers and newspapers held membership in a political party, the Democratic and Republican parties in the United States extend the privilege of membership to one and all. In general, no formal step has to be taken in order to acquire that membership; nor is the payment of dues essential. An age of twenty-one years is ordinarily specified; it is expected that the members will have lived in the territory long enough to justify voting, and that they will be citizens of the United States. But younger citizens are enrolled in Young Republican and Young Democratic organizations, while there are cases in which newcomers and even aliens have taken an active part in party affairs. Thus it may be seen that membership in a political party in the United States is a very tenuous affair. No credentials are furnished to ordinary members; no complete membership lists are kept; it is even impossible to state the exact number of members that a party has.¹

Logical as such a course might seem to be, comparatively few Americans select their political party after a careful weighing of records, issues, and leadership. To a large extent Democrats and Republicans are born, not recruited—in other words they hold their political persuasion because their fathers displayed such loyalty. Certainly there is nothing very rational about such a basis for political affiliation, but it is probable that it accounts for or at least largely enters into the party stands of a majority of people. Residence also plays a determining role in large numbers of cases. The late Senator Copeland was an ardent Republican when he resided in Ann Arbor, Michigan, but when he moved to Democratic New York City he decided to transfer his political allegiance—it may be added with appropriate reward therefor. Many residents of the North who move to the South find it desirable to forget their Republi-

**Factors
that Deter-
mine Party
Affiliation**

¹ Party workers do take polls to determine party affiliation. Some states require declaration of party affiliation in connection with registration. Election results are perhaps the best indication of party strength.

can antecedents and take on the Democratic mantle, for otherwise they more or less lose their votes.¹

Racial background may have a good deal to do with party affiliation or it may enter in very slightly. It is, of course, a truism that the conventional Irishman is a Democrat. However, those of German, Scandinavian, or English origin may belong to either party. Occupational associations often have a good deal to do with political relationships, although there is no real group solidarity. However, members of the National Association of Manufacturers are much more likely to be of Republican persuasion than Democratic; likewise the recipients of public assistance, direct relief, W.P.A., and so forth, tend toward the Democratic party. It is not uncommon to have shifts on the part of racial or occupational groups. Thus the Negroes who long were traditionally Republican became strongly Democratic during the early 1930's.

At one time in our history almost all of the voters aligned themselves with one party or the other—indeed one could scarcely be respectable without being a Democrat in the deep South or a Republican **Independents** in Maine or Michigan. Increasingly insistence upon such party ties has broken down, and consequently large numbers of persons now regard themselves as independent of any party. If they like the Republican candidates in a given election, they throw their support toward that party; if they prefer the Democratic standard bearers they vote that way. If one acted on Kant's categorical imperative, which calls for such action by the individual as might become the universal standard, political independence would be more or less out of the question. However, one can always expect that the majority of the people will remain party adherents, thus providing sufficient raw material for continued party existence. To this justification may be added the assertion that a sizable independent vote puts the parties on their good behavior—they know that the independent vote will swing the election and hence woo that vote.

Against such a point of view must be placed the declarations of keen observers, who maintain that real improvement is only possible as a result of action from within. If people who have high political standards withdraw to a position of independence, they **Action from Within** lose their right to criticize or at least the party ceases to pay

¹ Of course, Republicans may cast their votes in the final elections, but these are so unimportant that less than 10 per cent of the voters sometimes bother to turn out. The actual selections are made at the Democratic primaries; hence if one wants his vote to count, he must participate in those primaries.

any attention to their opinions. Moreover, such action on the part of those who want improvement leaves the party management to those who are satisfied with graft and incompetent public officials.

It is difficult to weigh the practical advantages and disadvantages of political independence. After high-minded persons have worked within a party for years with no apparent results and are dealt with in a high-handed and even insulting fashion by party leaders, it is not strange that they decide to try independence. Moreover, despite the assertion that all worthwhile improvements come from action within a group rather than from criticism directed from without, there is evidence that large-scale independence which places such voters in the position of holding a balance of power has had beneficent results in certain instances. The recent trend in the direction of a large independent vote is one of the more interesting current developments; it will be well worth watching to see where it eventually leads. One definite statement can be made at present and that is that the independent is less likely to be the result of irrational factors such as birth than are the rank and file of party members.

THE BIPARTY VERSUS THE MULTIPLE- OR SINGLE-PARTY SYSTEM

The United States and England have traditionally been supporters of the two-party system, while the European countries prior to the Hitlerian era almost invariably followed the multiple-party plan. For a time during the 1920's it seemed that England was abandoning the two-party setup in favor of three parties, but this trend proved temporary and the two-party system is again characteristic.¹ In the United States, also, there was a striking move away from the two-party system in 1912, but this did not continue long either. The strong devotion of both the United States and England to two parties has been commented on repeatedly by both journalists and academicians and during the critical period following 1939 was often identified with the maintenance of democratic institutions by those countries. Conversely the multiple-party system was referred to again and again as an important cause of the downfall of the Weimar Republic of Germany, the Third Republic of France,

¹ The Conservative and Liberal parties long dominated the English political scene. Then following the First World War the Labor party came in for serious reckoning. For a time it seemed that the field would be shared among the three parties; then the Liberal party lost strength until it could be classed as a minor party group.

and the democratic government of Czechoslovakia. The substantial history of the biparty system in the United States and England cannot, of course, be ignored, although at the same time it is only proper to take cognizance of its weaknesses in both countries. The failure of the two parties in the United States to take a stand on public questions during recent years has already been noted; there is a difference of opinion as to how serious this defect has been, but most thoughtful persons have regarded such a development with alarm. Whether it might eventually lead to a breakdown in our democratic institutions is the big question.

Theoretically there is a good deal to be said in favor of a party system which will give room for the expression of several points of view, for as we have already pointed out, it is not very satisfactory in this day of complex public questions to answer every query with a straight "yes" or a categorical "no." Practically there is danger when the biparty form is abandoned of going too far in establishing political parties. Three or four parties are one thing; a dozen or twenty parties are quite another. In the European countries it was customary under the multiple-party arrangement to go to extremes: France of the Third Republic ordinarily had a dozen or so parties that were fairly active and influential; Germany of the Weimar Republic had about the same number; while little Czechoslovakia found herself burdened with more than twenty. There can be no doubt that the excessive number of separate political parties constituted a weakness—this was officially recognized and steps were taken during the last days to remedy the situation.

To what extent the multiple-party system contributed to the downfall of the Third Republic of France and the Weimar Republic of Germany it is difficult to ascertain. In both countries there were undesirable results: instability, lack of majorities in legislative chambers, and undue party strife. Yet the instability, particularly in France, was less real than it appeared to be on the surface. In both Germany and France the strength of such parties as the Social Democrats, the Radical Socialists, and the Socialists was such that there was a substantial working basis if not a majority in the legislative branch. Whether party strife was bitter enough to tear down vital elements is a controversial question—after the National Socialists became a potent force, the situation in Germany, of course, became intolerable. The multiple-party system may have entered

Advantages
of Several
Parties

European
Experience

into the weakness of European governments, but it has thus far not been conclusively proved that it was a major cause in the final cataclysm of destruction. Germany was gripped by a paralyzing economic depression and haunted by the bogey of communism, both of which played into the hand of Adolf Hitler. Czechoslovakia and France were the victims of a Hitlerized Germany which was armed to the teeth.

In this day and age there seems more immediate likelihood of substituting the one-party system rather than a multiple-party arrange-

**The Bi-
party and
the One-
party Sys-
tem**

ment for our present two parties. Many of the countries of the world have followed such a course ¹ during recent years; under a totalitarian type of government such a step follows more or less automatically. Totalitarianism is so diametrically opposed to our political traditions that it is unpalatable to so much as consider its achievements. However, one may point out certain characteristics of the one-party arrangement. Instead of being more or less outside of the government, as are our two parties, the one party is invariably intimately bound up with the government. Indeed the association is so close that it is almost impossible to say what is party and what is government. The dictator and his immediate henchmen hold the top posts in both party and government and, of course, dominate each to the most minute detail. Under a one-party arrangement we could expect party membership to be restricted to four or five million of the most ardent and unquestioning supporters of totalitarianism. Supplementing such a central organism would be youth groups intended to train the young for the service of the party and the government, labor fronts serving to integrate labor into the system, professional and occupational associations which would bring in industry and the professions. In contrast to the comparatively modest headquarters of our present parties, there would be dozens of large office buildings in the larger cities as well as elaborate suites in smaller cities given over to party activities, with full-time paid employees running into the hundreds of thousands and annual budgets totaling several hundred million dollars.² Instead of limiting party

¹ Sweden, Switzerland, Argentina, and Chile still cling to their multiple-party systems; the United States and England to two parties; elsewhere the one-party system is the rule among the well-known countries.

² In the United States it is not easy to ascertain what the parties spend. The Hatch Act limits national party expenditures to \$5,000,000 in each case, but this amount was undoubtedly exceeded in 1940 by taking advantage of loopholes. The total expenditures of both parties in national, state, and local areas has been estimated at not less than \$25,000,000 every fourth year, perhaps \$35,000,000 or even \$50,000,000. By way of contrast the

approval to political positions, all holders of government positions would have to have party backing under such a system. Local government would be directly in the hands of the men who held official positions in the party rather than in the hands of elected officials, who in many instances, it is only fair to say, owe allegiance to party officials.¹

No one can doubt that a one-party system would be more pervasive in its influence, ruthless in its operations, and more costly. Its positive contributions would at best be uncertain. According to the Hitlerian logic, the advantage of the one-party system is that it eliminates "needless and destructive" argument, concentrates the interests and energy of the people on one goal, and hence makes for the efficient accomplishment of that chosen end. Our position is, of course, that opposition and discussion are productive of a wise governmental policy and that the lack of them leads, eventually, to a sterile and retrogressive state.

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National Socialist party was scheduled to spend \$70,000,000 marks (about \$28,000,000) on its annual gathering at Nuremberg in 1939 alone. The total expenditures of the National Socialist, Fascist, and Communist parties run to many times the amount spent by both parties in the United States.

¹ For a more detailed treatment of the role of the single parties in the totalitarian governments, see J. K. Pollock, *Government of Greater Germany*, rev. ed., D. Van Nostrand Company, Inc., New York, 1939; and Harold Zink and Taylor Cole, eds., *Government in Wartime Europe*, Reynal & Hitchcock, Inc., New York, 1941.

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CHAPTER IX

THE ORGANIZATION OF POLITICAL PARTIES

POLITICAL parties in the United States are organized into such regular divisions that they form almost a hierarchy. Their pyramidal structure may be examined by the top down or from the bottom up, depending upon one's point of view. Certainly, to some extent the national committees and national chairmen constitute the apex of the pyramid and are the most important parts of the system. They have much to do with planning and executing the presidential campaigns; they raise and disburse large sums of money, even subsidizing some of the state organizations; and they attempt to coordinate the efforts of the state and local organizations, especially in presidential years, to such a degree that solidarity is the constant watchword. Nevertheless, there are fundamental objections to beginning at the top and proceeding downward. In the first place, such a course is an admission that the political-party system is not of the people and consequently does not comport with the principles of a democracy. In the second place, the actual work of a party is carried on at the "grass roots," so to speak—not with the members of the national committee in Washington. Elections may be planned, but they are never won at national headquarters. The final decision is made at the polls, which are located in local units of government and around which thrive the local party organizations.

Finally, the entire structure leads from the bottom to the top as far as the formal selective process goes. The party members choose the local party officials; these latter select the state officials; and the state party organization in turn names the men who represent that state on the national committee. True enough, the scheme may not always work out in practice as it is supposed to, because political bosses and machines enter the picture to usurp the people's authority. Even if this is the situation, it may be pointed out that the perversion rarely if ever goes beyond the state—that is to say, we have never had a national political boss. Hence it is the state boss who names the local party officials and the national committeemen in some cases, but never the national committee which picks out the state and local officers.

Political parties are in general organized into three divisions: local, state, and national. The organization varies somewhat from state to state, depending upon local tradition, state law, and degree of urbanization, but the general outline is the same. We shall now proceed to a more or less detailed examination of the elements of these three large divisions.

LOCAL ORGANIZATIONS

The unit which may be considered basic in the whole organizational system of political parties is ordinarily designated the "precinct," although occasionally another term such as "division"¹ will be used. Precincts, of course, have definite geographical area, but they are primarily based on population or voters rather than upon square miles. In rural areas, where population is sparse and distances consequently great, a precinct may include only fifty or one hundred votes—sometimes the number is even smaller. But in towns and cities they are ordinarily based on at least three hundred votes, while six to eight hundred-vote precincts are commonplace, and precincts with over a thousand are occasionally encountered.

Precincts sometimes have committees to advise in carrying on the party work, but the main responsibility is almost always placed on the shoulders of one person. This official may be called a "precinct committeeman," a "precinct captain," or by some other name, but his functions are substantially the same—they may be succinctly and accurately summarized as follows: "getting out the vote for his party." No matter how badly he fails by every other canon, regardless of how ugly his disposition may be, or irrespective of the methods he uses, if he can carry his precinct year after year by handsome margins for his party he is considered highly successful. This official is usually elected by the members of the party for a two-year term at the biennial direct primaries, but in New York City he is appointed by the district (equivalent to a ward in many cities) captain and is responsible to that worthy. Despite the great importance attached to the office, there is frequently little interest displayed either on the part of candidates or voters, with the result that the actual selection may be made by a political boss. For example, a survey in Indiana showed that less than half of the precinct com-

¹ In Philadelphia the term "division" is used.

mitteemen had had any opposition at the polls and that many party members had not troubled to vote at all for this position.¹

Nevertheless, despite the lack of honor or public interest that may surround the precinct committeeman in many instances, his role in the American political system can scarcely be overemphasized. All too often this has not been recognized, with the result that bossism has been permitted to creep in, expensive failures have followed, and adequate standards of political morality have been lacking. Civic organizations have often focused their attention on the governor of a state or the mayor of a city on the supposition that, if competent and high-minded persons can be placed in those positions, great improvements will result. Actually it is exceedingly difficult for even the best mayor or governor to give a good account of himself unless he has the proper backing, for without that he has little foundation or fulcrum from which to work. At times this foundation may be the people—for example in Milwaukee Mayor Hoan depended very largely upon popular support. But in the states as well as in most cities it is the party to which the governor or mayor must look. If the precinct committeemen are bad, the entire system will probably be vicious. This is true either if a boss has named them or if the voters have been so indifferent that unworthy persons have wormed their way in. Any basic reform either in American local or state government and indirectly in the national government depends in large measure upon the caliber of the people who hold the position of precinct committeeman. That has been demonstrated again and again; it is one of the most important facts to be derived from a study of American government.²

Importance
of Precinct
Committee-
men

The exact activities of a precinct committeeman will depend in large measure on what kind of a precinct he has to cultivate. Of course, in every case, his primary goal, as we have already pointed out, is to carry his precinct by a sizable plurality for his party. But the means which will bring about that end vary a great deal from place to place.

Work of
Precinct
Committee-
men

In rural areas the committeeman usually goes around before elec-

¹ Reported in Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, pp. 175ff.

² For some very vivid characterizations of precinct committeemen, or "division leaders" as they are called in Philadelphia where the study was made, see J. T. Salter, *Boss Rule: Portraits in City Politics*, McGraw-Hill Book Company, Inc., New York, 1935. The section on Rosie Popovits is especially interesting.

tion day from farm to farm or it may be that he will be able to contact his voters at a grange meeting or at the elevator. Since the rural vote tends to be generally unaffected by social diversions or personal assistance, the committeeman is not expected to put on an elaborate program. It is probable, however, that there will be applicants for minor positions on the public pay roll whom the rural committeeman must interview and decide whether or not to support.

In more settled areas the work of the precinct committeeman varies, depending upon whether the precinct is well-to-do residential in character, inhabited by large numbers of poor people, or located in a foreign section. In the case of substantial residential precincts the duties of the committeeman are not onerous except around election day. During the course of the campaign he or his assistants make a door-to-door canvass of the voters, concentrate on those who are wavering between the parties, schedule a number of neighborhood meetings at which the local candidates can address the voters, and provide transportation for those who desire it on election day. Social affairs are not necessary; nor does a great deal have to be done in personal service for the inhabitants, beyond getting an occasional traffic ticket "fixed" or approving the application of a youth for a public job. This type of precinct committeeman has a full-time job with some business concern, has his own business, or is engaged in a profession. He usually has no expectation, indeed no desire, for an ordinary place on the public pay roll, although he may possibly be ambitious to hold an elective office at some future time.

The most interesting and busiest precinct official is found in the congested areas inhabited by the poor and those of foreign birth or extraction. These areas play an especially important role in winning elections and are the strongholds of political bosses and machines.¹ The voters of these precincts are very realistic in their attitude toward politics; they know the rewards of victory, and they expect a great deal of attention and service in return for their votes. The officials who have charge of these precincts for the two major parties tend to be full-time workers on the job—at least the representative of the party in power gives this work his full attention. Often he is so engaged in cultivating the voters of his precinct that he cannot leave it even on holidays, Sundays, at night, or in

¹ See H. F. Gosnell, *Machine Politics: Chicago Model*, University of Chicago Press, Chicago, 1937.

the summer, except when precinct business calls him to the city hall, a police station, or a local court. He may be too poor to have an automobile, but he is likely to afford the luxury of an extension telephone at his bedside so that he can take calls that come in the early morning hours.

The people of the precinct are in and out of his house every day, while he visits them at their homes, their places of business, on the streets, or at their social events. He attends the weddings, **Friend of the People** the funerals, the christenings, congratulating, condoling, kissing, and bearing gifts. He visits the sick and provides medical care if they are unable to afford such a service. He assists the very poor with food baskets on holidays, coal, and especially by getting adequate and prompt relief from the public welfare department.¹ Before jobs became very scarce and public employment offices were set up on a large scale, he did yeoman service in securing jobs for his people in private and public employment; but at present he confines himself pretty largely to obtaining jobs on the public pay roll.

When the people of the precinct get involved in a criminal offense, it is the precinct committeeman that they usually think of and call first after being taken to the police station. He goes immediately to see what can be done to relieve the situation—**Varied Activities** perhaps he can persuade the police to drop the charges, usually bail may be obtained, legal assistance can be provided, and finally the judge who tries the case may be approached with the request that the accused be given a suspended sentence or treated leniently. Social events of one kind and another—oyster suppers, dances, bridge parties, excursions for tired mothers, outings for youngsters—may be scheduled during the course of the year. All in all the precinct committeeman in one of these crowded precincts is a very busy man, not only on election day but all of the time; indeed he is so engaged in furthering the interests of his party that he has no time to earn a livelihood for himself. Inasmuch as he is almost never a person of means and the party funds are seldom adequate to permit more than a modest grant of \$25 to \$100 at election time, the precinct committeeman, if of the party in power, ordinarily holds a minor job on the public pay roll. One may wonder how he can find the time to perform the duties of this job when he does not have the time to earn a living in a private capacity. The answer

¹ In the days prior to 1933 a great deal of relief was given directly, but now public funds make party efforts unnecessary beyond the assistance noted above.

is that the public job is only a sinecure requiring little or no effort beyond that of collecting pay.

In urban areas where the population is large, the next step in the political organization is ordinarily the ward. Wards vary in size, even
The Ward in the same city, but usually include from half a dozen to twenty precincts. The precinct committeemen themselves make up the ward committee and either choose from their own number a ward leader or accept the choice of higher party officials, to have general oversight of the party activities in the ward. In small cities the wards may have little or no importance so far as the political organizations are concerned, but in the largest cities they are usually quite the reverse. The ward leader coordinates and oversees the work of the precinct committeemen, assists them in securing jobs on the public pay roll for their worthy helpers, apportions money which comes from the central treasury, and otherwise carries on the work of the party. If he represents the dominant party, the ward leader frequently holds a fairly lucrative public office or position; he may be a member of the city council, or a department head, for example.

Above the ward organizations is the city-wide structure, headed by a central committee and a city chairman. Each ward sends one or
The City two representatives to the central committee—usually the ward leader is one—which will run from ten or thereabouts to sixty or so members, depending upon the population of the city. The central committee either elects a chairman or accepts the chairman named by the political boss; in either case the chairman is likely to be a busy man. If he is the choice of the central committee, the city chairman generally depends heavily on that committee for the determination of policies and counsel; otherwise his relations with it are likely to be formal and his chief responsibility is to the boss who named him. Central committees designate secretaries, treasurers, and sometimes executive committees to carry on much of the day-to-day work. It is the function of the city-wide organization to plan out the campaign preceding an election, to bring about solidarity within the party, to raise money, and to direct in general the work of the party.

Much of this responsibility may be entrusted to the chairman, the treasurer, and perhaps to the executive committee if the central committee itself is unwieldy. The chairman frequently devotes a considerable portion of his time to the disposal of patronage. Applications for public jobs come up from the precinct through the ward to his

office and finally have to be acted upon there. Extensive files of these applications are often maintained in his office, for the number of job seekers is usually far larger than the jobs available. Precinct and ward leaders do not like to refuse to approve an application lest they make a political enemy; so they often give their signature, knowing that the bearer will not in the end get a job. Only in those cases in which the local leaders go personally to the city chairman and implement their written endorsement will a job actually be forthcoming.

In rural areas the next level above the precincts is usually the county organization, although at times an intermediate district is recognized. Each precinct is entitled to one or two seats on the county committee—it is probable that the precinct committeeman if not automatically the holder of a seat will be designated for that purpose. The County The county committees, which may have from fifteen or twenty members to a hundred or more, elect a county chairman, a vice-chairman, a treasurer, a secretary, and in certain cases name an executive committee. The committees meet at stated intervals, but are especially active during election years, when they draw up plans for the party activities, raise money, and coordinate the campaign. The county chairman is usually an important figure in his own bailiwick at least, for he not only is expected to do much of the actual work decided upon by the committee, but he has a great deal to do with the distribution of patronage. Applications for jobs clear through his office and are either finally acted upon in the case of county patronage or passed on to the next higher official in the case of state or federal patronage.

Inasmuch as party organization varies somewhat, depending upon whether the territory involved is urban or rural, it is somewhat confusing to pass from the basic precinct, common to both, to the state level. In the majority of cases there is no city to City-county Relations complicate matters and hence the precinct leads to the county and the county on to the state. In small cities, little or no attention may be given to political organization beyond a more or less informal setup for local elections. In some states it is provided that the precinct committeemen shall constitute the city committee where they are located within an urban area and at the same time hold seats on the county committee.¹ In very large cities a special provision has to be made for

¹ Indiana makes such a provision. Hence the precinct committeemen in Indianapolis serve in a dual capacity: as members of the city central committee and as members of the

integrating the city and the county organizations. Here the city organization may far outshine the county organization and carry on relations directly with the state headquarters of the party. In other instances the city committee will designate a certain number of representatives to serve on the county committee. In New York City there is the curious arrangement which omits a city committee entirely. Tammany Hall,¹ for example, is the Democratic organization of one of the five counties over which New York City is spread; each of these five counties has its own committee and chairman. In making decisions relating to city-wide matters, the picking of a mayoralty candidate for example, it is customary for the five county leaders to confer.

The final local division of party significance is the district, usually coterminous in boundaries with the congressional district. Each county committee within such a district sends one or two representatives to a district committee which chooses a chairman and other officials according to needs. The district organization is important in connection with congressional elections and to some extent the disposal of federal patronage, especially postmasterships. The districts may or may not be a direct link between the counties and the state party structure. In other words, the district organizations are sometimes maintained primarily for the purpose of handling congressional elections and patronage and occupy a status somewhat apart from the main hierarchy. Again the districts may be an integral part of the system, as they are, for example, in Indiana, where the district chairmen constitute the state committees of their parties.

STATE ORGANIZATIONS

Each county or each district, as the case may be, is entitled to representation on the state central committees of the two major political parties. If counties are the basis, some consideration is often given to their respective political importance, so that very populous counties receive several seats while small counties are assigned only one. Districts are supposedly equal in population² and conse-

Marion County committee. The only difference between the two committees is that the latter includes committeemen from the rural section of the county.

¹ Strictly speaking, Tammany Hall is a Democratic club, but it is usually regarded as synonymous with the Democratic party in Manhattan.

² Actually congressional districts vary considerably in population, although the Constitution commands that they shall be equal in that respect. Certain congressional districts in Chicago have approximately three times the population that downstate Illinois districts sometimes can claim, because there has been no reapportionment in Illinois since 1901.

quently receive the same representation on the state committee. The committeemen from the counties and districts may be especially chosen for that purpose or they may be more or less automatically entitled to membership because they are district or county chairmen. In any event the members of the state committee are for the most part ranking members of the party from various sections of the state, except in those states dominated by political machines, in which case the state committeemen may be largely automatons. The size of state committees depends to some extent upon the population of the state, but even among states of the same population there may be lack of uniformity. Fairly populous states may have small committees of fifteen or so, while smaller states may provide for twenty-five or more members. Even state central committees of fifty to a hundred or more are to be encountered.

State central committees perfect an organization which includes a state chairman, a secretary, a treasurer, several vice-chairmen, and, if the committee is sizable, an executive committee. They hold stated meetings every year or oftener, but are, of course, especially active in an election period.

The responsibilities of a state committee are determined in large measure by the independence of its members. If they are influential members of the party in their own name, it is probable that the deliberations of the committee will assume distinct im-
Work of a
State
Committee
portance; if they are figureheads put up as a front by a political boss or machine, their proceedings will be cut and dried and without real vitality. A large committee is less able to function effectively than a smaller one, with the consequent necessity for those that are comparatively large to set up an executive committee which does most of the work. Something depends upon the aggressiveness and resourcefulness of the person named as state chairman—it is to be expected that a cautious chairman will lean far more heavily on his committee than will a chairman who considers himself the state party leader. In general, a state committee does for the state about what the local committees do for the lesser units of government. Policies are discussed and adopted; a state headquarters is set up; decisions are made about tactics, the expenditure of money, and the waging of the campaign; arrangements are made for the state convention; relations with the national party organization are canvassed; and the disposal of patronage, if any, is considered.

Each of the two major parties maintains a permanent headquarters, usually in the state capital, although occasionally convenience will indicate a larger city.¹ Suites may be rented in an office building or space may be secured in a hotel where there is a lobby for visitors to loaf, where there are eating and drinking facilities, and where there are other comforts not ordinarily provided in an office building. Although the state chairman is in and out of these headquarters, he is likely to be a man of affairs with other demands on his time and hence unable to devote full attention to political duties. The secretary is often expected to give all of his efforts to party work and may be paid a reasonably good salary for such service or be maintained indirectly through appointment to a public position carrying a good salary but few duties. The treasurer, drawn from the ranks of business men or financiers, gives only such time as he can spare to his party duties. During the heat of a campaign numerous public-relations agents, clerks, receptionists, accountants, stenographers, research workers, and even detectives are attached to headquarters.

The atmosphere of these headquarters is literally charged with tenseness as election day draws near. Visiting politicians come in from the local organizations in hordes; conferences are going on more or less constantly; long distance telephone calls and telegrams pour in and out; immense quantities of mail are received and dispatched; printed material is being prepared; radio script and manuscripts for rallies are being produced; elaborate files of clippings, reports, and correspondence are maintained. On election night a battery of telephone operators will be kept busy receiving election returns.

After the election is over, the turmoil at state headquarters settles down somewhat, the exact degree of relapse depending upon whether the party has triumphed or lost. If the latter is the situation, the headquarters is likely to surrender much of its space, retain only the skeleton of an office force, and go into mourning until the time for another campaign arrives. Nothing is more like a deserted village in its somber silence than a state headquarters after a crushing defeat at the polls; even the party leaders are inclined to stay away. On the other hand, the headquarters of the winning party will maintain vigorous activity even after the election is over. There will be

¹ For example, the state committees of New York maintain offices in New York City.

thousands of applicants for jobs, contracts, and other favors.¹ Local officials will come in for numerous conferences; representatives of the press will call regularly because headquarters is a good source of news. Considerable amounts of correspondence will be coming in and going out, although there will not be the heavy movement of second-class mail which accompanies a campaign.

Every two years most states witness the holding of state conventions by the major parties. Delegates, elected by the party members at primaries or indirectly by caucus or committee, pour into **The State Convention** the state capital or some other designated city² to spend two or three days attending a mammoth convention. Several hundred delegates—in certain states a thousand or more, party officials, candidates for office, members of families of party leaders, newspapermen, and throngs of the curious will overflow a large auditorium. Preliminary arrangements have been made by the state committee, which is, of course, interested in seeing that the convention does not get out of hand. Committees on platform, credentials, order of business, and sometimes other matters are set up, with each district or county being represented thereon.

The state committee designates temporary officers to act until a permanent organization can be effected. The temporary chairman ordinarily delivers a ringing address in which he praises the **Convention Activities** accomplishments of his own party to the sky and violently denounces the shortcomings of the opposing party. These state conventions adopt a platform, already tentatively worked out by the state committee and prominent party leaders. Inasmuch as there is comparatively little practical importance attached to the platform, which is confined largely to self-congratulation and castigation of rivals and which is careful to make its commitments vague albeit phrased with a flourish, there is frequently not too much interest shown by the delegates. If a presidential election is in the offing, the convention will display much more intense interest in the choice of the delegates to the national convention, provided, of course, it is authorized to make such a selection.³ At one time state conventions nominated the various party candidates for public office; and this event marked

¹ After a partial victory in 1940 the Republican headquarters in Indianapolis found itself inundated with more than twenty thousand applications.

² Some states, such as Ohio, invariably use one city which is outstanding, while others, such as New York, move the conventions around from city to city.

³ Some state conventions choose all delegates; others name only the delegates-at-large.

the climax of the convention, for delegates almost invariably became wrought up over conflicting claims and merits. The direct-primary system has shorn conventions of much of this authority; hence in those states in which the primary has been carried furthest conventions have little or nothing to do in this field. However, some states reserve to the party conventions a share of the work, while in a few instances there has been a considerable trend toward reinvesting party assemblages with this exciting duty.¹

Where state conventions currently exercise the right to nominate, it can scarcely be asserted that the rank and file of the delegates have a great deal to do with the actual decisions. The leaders of the party meet together before and during the convention to discuss the slate. Usually there are several factions which have their own likes and dislikes, with the result that a considerable amount of compromise and trading occurs. When negotiations have been completed, word is passed on to the delegates by the leaders and the nominations are quickly made. This system sometimes produces good results; again it is responsible for wretched choices. The fact that various factions have to be placated unless a party split is to ensue makes for a certain balance in the slate of candidates, but it also accounts for some strange nominations. While the delegates wait for the word to be passed out as to how they are to vote, they amuse themselves with all sorts of noisy antics, usually associated with schoolboys.

Role of Individual Delegates

NATIONAL ORGANIZATION

The two major parties each maintain national committees of approximately one hundred members, made up of two committeemen, a man and a woman, from each state, together with representatives of certain territories.² National committeemen are nominally elected by the national conventions of the parties, but they are actually chosen by the state organizations. Every four years each state delegation presents two candidates to be elected national committeemen by the national convention. The state delegations may have the power to decide such nominations themselves; they

¹ Indiana and New York may be cited as examples of states that have restored some of the nominating authority of party conventions after experience with the primary.

² The Democratic National Committee is slightly larger than the Republican National Committee because the Democrats permit more territorial representation.

may be required by state law to designate those who have been chosen by direct primary; they may lean heavily on the state committee for advice; or they may take their orders from a political boss or machine. The honor and power attached to membership on a national committee is by no means insignificant; hence there is no lack of candidates despite the absence of direct financial remuneration. The national committees meet once each year in Washington and during presidential election years schedule other meetings for special purposes. Since the committees are rather large for detailed discussion and since it is not feasible to call together at frequent intervals committees of widely scattered membership, executive committees are created and officers designated to take over much of the work.

There is no fixed rule which determines the size and composition of the executive committee of a national committee. If the times seem to point to a certain size or if the logical candidates are few or numerous, the national committee will act accordingly. The national chairman, national secretary, national treasurer, and at least one of the vice-chairmen almost automatically hold membership, and outstanding leaders who live in the East or Middle West are more frequently included than those who live at a greater distance in the far West or Southwest. As a rule, the total membership does not fall under ten nor exceed fifteen. Meetings of this subcommittee are not given undue publicity, but it is known that they are of frequent occurrence, especially in the year when a President is to be chosen. Most of the important decisions originate from this inner group, although they may have to be ratified by the entire committee as a matter of form.

**Executive
Committee
of the Na-
tional Com-
mittee**

In addition to the executive committee the national committee maintains other subcommittees which include both national committeemen and influential party leaders drawn from the outside. The finance committee is one of the most important of these and is given careful attention, for the problem of finance is always present. The treasurer of the national committee, of course, works in close conjunction with this subcommittee, which usually includes in its membership men who are both well-to-do and active in party affairs. A congressional committee is charged with integrating the efforts of the national committee with the interests of congressmen, especially those who are seeking reelection.

**Other Sub-
committees**

The national committee has three officers who are often in the lime-

light, together with others who are not so well known. The national chairman of the party in power enjoys a particularly commanding position in the public eye. Strangely enough, despite the fact that

Officers of the National Committee he heads the national committee, he is not actually chosen by it; rather that privilege is through courtesy reserved to the party nominee for the presidency. The national chairman presides over the national committee, names the members of the executive committee, is at least in nominal charge of the national headquarters, and has much to do with the conduct of party affairs. There is considerable diversity among the men who hold the position—M. A. Hanna was certainly not made in the same mold as Joseph W. Martin; James A. Farley is quite unlike John Hamilton. An aggressive national chairman, such as Farley, will take much more initiative than a rather cautious one, for example the late Thomas Taggart. Nevertheless, even a rather colorless and diffident national chairman cuts a considerable figure in national politics. The secretary of the national committee keeps the records of the committee and has much to do with the conduct of affairs at national headquarters—he may spend his entire time in that capacity for several months before election day. The treasurer receives and disburses party funds and assists the finance committee in raising the funds. Then there are several vice-chairmen, one of whom is a woman, who may or may not be outstanding in party affairs.

Both parties maintain permanent headquarters in Washington as well as branches during a campaign in two or more other large cities.

National Headquarters Traditionally, there has been intense activity during the months before presidential elections followed by quiescence during the intervening years. A staff made up of hundreds of workers of one kind and another is recruited in preparation for an election; while great quantities of space are rented. All sorts of activities are carried on by such subdivisions as the following: speakers' bureau, farm division, club division, publicity department, radio division, research division, foreign-language division, purchasing department, colored men's, colored women's, and colored speakers' bureaus, and labor division. Tons of literature, varying from small pamphlets to books of several hundred pages, are prepared and sent out to the state and local organizations. Truckloads of letter mail are received daily. Then after the election this huge organization is allowed to disintegrate, until only a few rooms with a skeleton staff remain. This

practice is in great contrast to that followed in the totalitarian countries; indeed it is even different from the English system.

After the election of 1936 Republican Chairman John D. Hamilton made a trip to England to study methods of the political parties in that country. He was particularly impressed by the permanent organization of the Conservative party and returned home to attempt a similar setup for his own party. During the years immediately preceding 1940 the Republican party leased several floors of a building located near the White House. Here it housed what it claimed to be the best political library ever assembled in the United States, elaborate records and files, a research agency directed by several highly trained persons, a very active publicity department, a well-organized accounting department, and so forth. Under standards which Chairman Hamilton claimed to be equal to those set up by the Civil Service Commission of the United States in preparing eligible lists for public employment,¹ a staff was gradually recruited to man this elaborate headquarters on a full-time basis. How permanent such an establishment may be it is too early to say, but it marks a very significant development in party practice and would seem to be a very sensible arrangement. Under this new system the Republican party, although out of power, was able to build up the largest number of regular contributors that any party has thus far managed—more than half a million altogether.

During presidential elections the main burden of party affairs is handled by the national committee; but in between, as has been pointed out above, it has been the general practice in the past to allow the machinery to disintegrate. Inasmuch as some Senators and all Representatives are elected in the off-year elections, some arrangement is necessary to take care of their campaigns. To meet this need, Republican and Democratic congressional and senatorial campaign committees have been set up. These have little to do during a presidential election, but they are active in planning and waging campaigns during the off years. The Republicans maintain a congressional campaign committee made up of one congressman from each state having Republican representatives; these are designated by each state's party members in the House of Representatives and are formally elected by a caucus of Republican Senators and Representatives. The Democrats are a little more liberal

Republican
Organiza-
tion

Congres-
sional and
Senatorial
Campaign
Committees

¹ In a statement to a group of members of the Institute of Government in April, 1940.

since they permit each state, whether represented in the House or not, one seat on the committee. If there is no incumbent congressman available, a former member may be named by the chairman of the committee. Both parties also have senatorial committees, which correspond to the congressional campaign committees, except that they are composed of Senators and primarily concerned with the election of Senators.

THE NATIONAL CONVENTION

When the national committee holds its regular meeting in December or January before the November of a presidential year, it makes preliminary arrangements for holding a national party convention. A set of temporary officers is named; the time for holding the convention is fixed; the place is determined; and a call is sent out to the states notifying them of the convention and stating how many delegates each is entitled to send.

National conventions are usually scheduled for June or July, with the latter half of June and early July being favored. During the period that the Republicans enjoyed a lion's share of power the magnanimous custom grew up of having the Republican convention first and the Democratic following, so that the Democrats might have the advantage of knowing whom their rivals had nominated for the presidency and what stands had been taken in the platform. Even after this pleasant state of affairs ceased to exist, the Republicans were too proud to modify the arrangement, until in 1940 they decided that it would be wise to make such an alteration. But the Democratic National Committee, not inclined to be sporting, refused to fix the date of their convention at their usual meeting. Hence after some delay the Republicans finally concluded that they might as well set a date, even if their convention preceded that of their opponents—which turned out to be the case.

Conventions require ample hotel accommodations, a hall with large seating capacity, and a considerable expenditure of money.

Cities which can offer the first two facilities and are willing to put up a certified check for \$150,000 or so send their bids to the secretary of the national committee who brings them to the attention of the committee. Occasionally a committee will decide on Houston, San Francisco, or Denver,¹ but in general there is a disinclina-

¹ Only the Democratic National Committee has been bold enough to schedule conventions in Houston, San Francisco, and Denver.

tion to go beyond the Mississippi River or the Mason and Dixon line. Chicago, Cleveland, St. Louis, and Detroit are favorites because of their central location, convenient transportation facilities, and reasonably adequate hotel accommodations. New York City, Philadelphia, and Boston are not ruled out, although their location militates to some extent against them. There is sufficient interest among cities in acting as host to a national convention to produce a substantial contribution toward convention expenses, recently to the amount of \$150,000.¹ Agreements to keep hotel rates within a reasonable limit are also required.

For many years both the Democrats and the Republicans permitted each state to send to a national convention twice as many delegates, together with an equal number of alternates, as the state had Senators and Representatives in Congress. This method of apportionment played into the hands of more or less irresponsible elements for years, but it was not until 1912 that it displayed its weakness in a glaring form. In that year the Taft forces were able to control one national convention largely because they had the united support of the southern states which had large convention delegations but cast few Republican votes at election time. The four deep south states of Alabama, Louisiana, Mississippi, and South Carolina had together accounted for only 42,592 votes in 1908; yet they had 82 delegates in the 1912 Republican national convention. On the other hand, Pennsylvania had cast almost twenty times that number of votes,² but had only 76 delegates.

The experience of 1912 led the Republicans to make a change which would prevent a recurrence in 1916 and the present rule became effective in 1940. Under this system every state is given four delegates at large, together with one delegate for every congressional district casting 1,000 or more Republican votes in the last general election. To recognize the loyal Republican states, an additional delegate is authorized for those congressional districts that cast as many as ten thousand Republican votes in the last general election and a bonus of three delegates is given to those states which can show Republican pluralities in the last presidential election. In those states having congressmen-at-large two additional delegates are

¹ This amount is subscribed by hotels and businesses that expect to profit from the convention.

² Pennsylvania cast 745,779 votes for the Republican party in 1908.

permitted for each such officer, and in every case an equal number of alternates is allowed.

The Democrats have perhaps never suffered so severely from unfair apportionment as the Republicans and hence despite much discussion **Democratic Plan** permitted the old arrangement of twice as many delegates as seats in Congress to continue down through 1940. A committee to study the situation was authorized in 1936 and reported a very cautious change in 1940 which will give to those states carried by the Democrats in 1940 two additional delegates in 1944. Since the Democrats have enjoyed the support of so many states recently, the problem is, of course, far less acute than has ordinarily been the case and this doubtless entered into the failure to make a more far-reaching modification.

Under the Republican plan, a state, which has supported the party and which has fifteen seats in the House, is apportioned thirty-seven seats in the Republican national convention. If it has not **Examples** backed the party enough for victory but if it has a substantial number of Republicans in every congressional district, it would receive thirty-four seats. If it is strongly Democratic and offers little or no Republican consolation, the apportionment is cut to only four seats. Thus it may be seen that the Republican plan gives those states which contain the party strength a distinct advantage. A state of similar congressional representation under the new Democratic plan will receive thirty-six seats if appropriately Democratic and thirty-four seats if disloyal to that party. This is so slight a concession that one questions whether it was worth making.

When the delegates and their alternates reach the convention city, they first of all presumably settle themselves in hotel rooms which have been reserved long beforehand. As far as possible, **Temporary Organization** delegates from a single state like to be together and consequently take adjoining rooms, sometimes several floors of a hotel. Convention seats are distributed after lots have been drawn for the best locations toward the front of the hall, with all the delegates from a state together.¹ Committee assignments have already been worked out by the various state delegations to the four important committees on which each state is entitled to representation: (1) credentials, (2) permanent organization, (3) rules and order of business,

¹ The alternates, however, sit in the rear of the hall unless called upon to sit for a regular delegate.

(4) platform and resolutions. The temporary officials, who have been selected by the national committee, get the convention off to a start. After a roll call of the states and territories, prayer, and other preliminaries have been disposed of, the temporary chairman delivers a keynote address which is one of the high lights of the entire convention. Inasmuch as the temporary chairman is ordinarily selected not only on the basis of his outstanding party record but also because of his reputation as a political orator, this address reaches a high level of eloquence and emotionalism. The record of the party is praised to the very skies; the sins of the opposing party are depicted as reaching the most devastating proportions.¹

On the second day, after the committee on permanent organization has recommended a slate of permanent officers, the national convention ordinarily organizes itself on a permanent basis. There is frequently a great deal of jockeying among the several fac-
Permanent
Organiza-
tion
tions to get their candidates chosen as permanent chairman, secretary, sergeant-at-arms, and other officers of the convention, for the control of these officials is supposed to confer a considerable advantage. A favorably disposed chairman may recognize delegates belonging to one faction of the party while he may refuse the floor to others. The sergeant-at-arms and his assistants have been known to permit the friends and followers of the faction which was responsible for naming them to their positions ready admission to the convention hall and freedom of movement about the floor, despite the rules which restrict such privileges.² The permanent organization having been effected, the permanent chairman delivers a prepared address of lengthy character which repeats a great deal of the flowery praise and the vitriolic denunciation of the keynote address.

There are few more colorful and dramatic spectacles than a national party convention. A mammoth hall, elaborately decorated with flags, bunting, and party emblems, is filled to the last seat with
General
Atmosphere
delegates and their alternates, members and officers of the

¹ Although convention speeches follow on the whole the old-fashioned, gingerbread school of bombast, a few have risen above it enough to obtain places as classics. For example, Bryan's "Cross of Gold" speech of 1896; which was in preparation two years, and Robert Ingersoll's "Plumed Knight" speech on Blaine in 1876 are now a part of the American forensic tradition.

² Ordinarily only delegates and alternates are permitted on the floor. Friends of each faction are supposed to content themselves with the galleries. It has sometimes been claimed, when the sergeant-at-arms does admit friends of his faction, that these are merely rowdies and ruffians hired for purposes of intimidation.

national committee, other party notables, distinguished visitors, representatives of the press and of the broadcasting networks, and in so far as space permits small-fry politicians and the general public. Perhaps the most striking characteristic of a national convention is noise. The chattering of the delegates, the milling about on the floor, and the attempts of the officers to call for order provide a general undertone. Add, then, to this the stamping of feet, the clapping of hands, the vociferous verbal applause, the raucous jeering, and the grandiloquent oratory of the delegates. Even that is not all; blaring brass bands, automobile sirens, whistles, and even the lowly cowbell make for a final crescendo of sound effect. Perhaps even more strange to the eye of the uninitiated are the curious antics of the some two thousand official delegates and their alternates. The inhibitions and restraints of years of maturity are cast to the winds. Almost every type of prank and trick associated with schoolboys and college fraternities is to be observed. The most pompous and conservative men of affairs surrender their dignity and display the exuberance and enthusiasm of callow youth.

Foreign observers often express surprise at the amazing spectacle of fifty-year-old substantial citizens yelling to the capacity of their lungs, cavorting about like satyrs, and indulging in the strenuous hilarity of a snake dance. What is the explanation of such unusual behavior? To begin with, the delegates are away from the restraining influences of home; moreover, they regard a national convention as something to relieve the tedium of ordinary existence. But perhaps even more important is the necessity of having something to do. Men who have attained positions of influence in their local communities and lead more than ordinarily active lives find it difficult to sit calmly with folded hands awaiting the outcome of negotiations among the leaders of the party. The national convention is far too large and loosely organized to deliberate with any degree of effectiveness about platform planks or about the choice of party candidates. Consequently, the actual work of drafting a platform and deciding among the claims of those ambitious to be the standard-bearers of the party is largely entrusted to comparatively small groups of leaders. Until these leaders have completed their labors, there is very little for the delegates to do, other than to mark time and to engage in the colorful exhibitionism noted above.

Explanations of Convention Behavior

During the last decade there has been considerable emphasis placed upon the broadcasting of national convention proceedings. This has required certain marked changes in the conduct of conventions. Whereas under the earlier system they had followed no schedule, spending as much time on speeches and applause as the delegates desired and giving attention to the various items of business as convenience dictated, the recent broadcasting arrangements have necessitated a much more rigorous order. Millions of radio listeners soon weary of applause extending over periods of a half an hour or more because they cannot witness the dramatic spectacle which accompanies the noise. The radio chains have handled the problem to some extent by cutting off the microphones in the convention hall and switching to informal and brief comments made by well-known delegates or party officials. But even so the element of time, so costly in the case of national hookups, has necessitated a rather severe curtailment of prolonged demonstrations. Many of the delegates complain vigorously at this regimentation, but the party officials are of the opinion that the advantages to be derived from extensive radio publicity are such as to justify a revision of procedure.

**Effect of
Radio
Broad-
casting**

The broadcasting has also made it necessary to schedule the more striking features of the proceedings during the evening hours, when large numbers of citizens are free to listen to their radios. Moreover, inasmuch as national hookups have to be planned well in advance, it is essential that such matters as the keynote address, the speech of the permanent chairman, the report of the Committee on Platform and Resolutions, and the nominating speeches be set for specific hours, irrespective of whether the convention is ready or not. At times, schedules have produced embarrassment—for example, the case of the report on the Democratic platform in 1936 which had not been finally completed when the time for the broadcast had arrived.¹ Most of the speeches have had to be severely reduced in length in order to meet broadcasting requirements. Whether too drastic modifications have been made in convention procedure in order to meet the demands of the radio chains may be a question; at least, it cannot be denied that considerable dissatisfaction among some of the older delegates has resulted. Nevertheless, there has been great

**Problem of
a Time
Schedule**

¹ After announcements to eager radio listeners that the platform was to be revealed, it was necessary for the committee to read only a preliminary report.

interest on the part of large numbers of people scattered throughout the length and breadth of the land in the broadcasts from the national conventions. This has undoubtedly had the effect of heightening the general interest in public affairs and may have contributed appreciably to the record votes of the last three elections.

Despite the fact that platforms are no longer taken too seriously, the national conventions continue to go through the motions of drafting one. The report of the Committee on Platform and Resolutions has recently been scheduled for the third day of the convention. For several months before it convenes, members of the national committee and other interested party leaders have thought about and discussed the probable contents of the party platform. Members of the Committee on Platform and Resolutions are sometimes designated well in advance of the assembling of the delegates in order that adequate time may be available for platform drafting. Hence, when the convention meets, one or more tentative platforms have usually been prepared as a basis for convention action. Nevertheless, the finishing touches and the final compromises have to be added during the few hours between convening and the time scheduled for the report. Although little or no attention may be given to the planks of the platform after election, there is frequently bitter argument among the members of the Committee on Platform and Resolutions as to exactly what will go in and what will be left out. While there is a disposition on the part of the convention to accept the report of the platform committee without undue question, occasionally specific planks will result in heated discussion on the floor.

The platforms of the national parties, usually fairly lengthy in character, are ordinarily couched in phrases which make most sonorous reading. However, a careful dissection of the contents will reveal that the underlying philosophy is one of evasiveness. Clear-cut stands on vital questions are avoided with the greatest skill; an effort is made to please every type of citizen by inserting cleverly worded provisions which may be read according to one's basic political views. A concession to one important element of the population must be matched by a similar concession to opposing elements. As a sort of filler, the exploits and triumphs of the party during the years that have passed may be generously noted.¹

¹ For a compilation of party platforms, see K. H. Porter, *National Party Platforms*, The Macmillan Company, New York, 1924.

In general, the delegates regard the events of the first three days of the convention with more or less restrained impatience and anxiously await the climax, which is the nomination of a candidate for the presidency. For months the newspapers have given **Nominating Speeches** generous space to the ambitions and claims of those party sons who aspire to the chief magistracy of their country. The question of who will be chosen by the two major parties has long before the convention been a popular topic of dinner-table, office, factory, farmyard, and golf-course conversation. Hence, it is not strange that the delegates have become very excited at the prospects of their favorite candidate and are eager to move to a decision. When the convention has reached this point in its order of business, the secretary begins a roll call of the states in alphabetical sequence. As a state's name is called, a representative may arise and place in nomination a candidate supported by that state delegation. If a state which comes early in the alphabet has no nomination to make, it is usually assiduously courted by states whose turn comes later and who desire to trade roll-call positions in order to nominate, for there is a feeling that early nominations hold some advantage. When all the states have had an opportunity to place their candidates in nomination, the convention proceeds to balloting.

Nominations are accompanied by speeches which relate the biography, extol the virtues, and praise the accomplishments of the favored candidate. Until very recently a curious tradition ordained that these lengthy and flowery nominating speeches should maintain an air of anonymity until in a final burst of eloquence the name of the candidate was revealed to the delegates, despite the fact that everyone on the floor knew beforehand which candidate the speaker was eulogizing. The 1940 conventions saw a more realistic technique, since some of the nominating speakers named their candidates at the beginning. Moreover, the necessities incident to radio broadcasting have cut down the length, particularly in the case of the speeches seconding nominations. There is permitted only a single primary nominating speech, but seconding speakers at times may be quite numerous—in 1936 forty-seven seconding speeches were made in support of Franklin D. Roosevelt, each supposedly not to exceed five minutes.

**Character
of Nomi-
nating
Speeches**

The term "balloting" suggests that the presidential nominees are chosen by national conventions through the use of paper ballots. Actually both national conventions employ a roll call of the states for

this purpose. As a secretary calls the names of the states in alphabetical order, a representative from each state will arise and announce as loudly

Balloting as possible the vote of that state. The conventions of both parties now permit the vote of a state delegation to be divided among several candidates, although prior to 1936 the Democrats had used the so-called "unit rule" which required the entire vote of a state to be cast for a single person. In general, it is not the custom of state delegations to take advantage of this rule, but there are always cases in which they are so divided among themselves that no agreement can be reached. Indeed, differences of opinion within a delegation may render it impossible to announce any vote at all, with the result that the entire delegation must be polled individually on the floor of the convention. Needless to say, such polling requires a considerable amount of time when a state with a large delegation is involved; therefore the permanent chairman may urge the members to exert themselves further in arriving at a decision while the secretary proceeds down the alphabet to other states. However, if a member of a state delegation persists in demanding a poll on the floor on the ground that the vote as announced by the chairman of the delegation does not represent the facts, the convention has no choice other than to accede. In the case of Texas, which had divided each of its votes into sixths in the 1940 Democratic convention,¹ the polling occasioned considerable criticism and expressions of disgust on the part of many delegates because of the interminable delay resulting.

After each roll call has been completed, the votes are tabulated and the results are announced. A bare majority is now required by both parties to select a nominee, although prior to 1936 the Democrats had long stipulated a two-thirds majority. **Number of Ballots Required to Nominate** There is a considerable variation in the number of ballots necessary to choose a candidate. In the case of a President who expects a second term the requisite majority may be forthcoming on the first roll call and will rarely extend beyond three or four ballots. However, if the field is open, it requires an unusually outstanding candidate to secure the nomination in fewer than half a dozen roll calls. Although recently the Democrats have been able to choose their nominee quite expeditiously, they have over a period of years had to

¹ Texas chose six times as many delegates in 1940 as it had seats in the Democratic National Convention, giving each delegate one-sixth of a vote. Party leaders dislike such a practice, but some states persist in following it because of the pressure for seats among party workers.

resort to more extended balloting than their rivals—in 1924 setting up an all-time record of 103 ballots, spreading over 9 days.

By the time the process of selecting a presidential nominee has been completed, there is a strong sentiment for speedy adjournment. The delegates have by this time exhausted their energy; pocket-books are running low; the weather is more than likely oppressive; and finally any business after the choice of a presidential nominee is anticlimactic. Hence nominating a Vice-President is rushed through with few of the flourishes and little of the pageantry accompanying the main item of business. The secretary calls the roll of the states; nominating speeches are made; ballots are taken; but all in an atmosphere of impatience and to some extent indifference. There is a disposition to accept as a running mate candidates favored by the presidential nominee, although in 1940 such support of Henry Wallace by President Roosevelt was bitterly resented by numerous delegates, with the result that the balloting for a vice-presidential nominee was the high light of the convention. In many instances an attempt is made to name the vice-presidential nominee from a faction which has not been too enthusiastic about the principal choice and thus needs placating. Although some very able persons have been nominated as Vice-Presidents, the haste, the indifference, and the compromising tendency incident to the selective process have frequently resulted in mediocrity.¹

**Nomination
of a Vice-
President**

It has long been a well-established tradition that the leading candidates for the presidency shall not attend the national convention. This is not to say that these persons have not displayed the greatest interest in the successive stages of the convention; indeed, many of them have arranged for leased wires from the convention floor to their own homes or offices. Moreover, they have in every case had their managers on the actual scene of battle. Inasmuch as the successful candidate has not been present in the convention city, it has been the custom for national conventions to designate a notification committee, which at some subsequent date would call on the nominee and formally notify him of the honor conferred. The Republicans continue to cling to such a tradition and even in 1940 staged notification ceremonies at Mr. Willkie's old home town in Indiana.

**Notification
Ceremonies**

¹ In 1904 the Democrats displayed this indifference and tendency to compromise to the nth degree when they nominated a rich but not particularly outstanding Senator who was eighty-one years old.

However, the Democrats, no doubt led on by their tradition-breaking leader, Franklin D. Roosevelt, ended the conventions of 1932 and 1936 with a personal appearance and speech of gratitude by their candidate.

POLITICAL BOSSES AND MACHINES

In the first part of this chapter we have examined the regular organization of political parties. If the system operated as it is supposed to, there would be no occasion for additional discussion; **Political Bosses** however, in certain instances popular indifference has led to a deterioration of party vigor which in turn has made it possible for political bosses to dominate the political scene. Although some writers have labeled Mark Hanna a national political boss, there is considerable question whether a single person has ever been able to usurp political power over the entire nation. However, in the states, cities, and other local units of government it has not been uncommon for political bosses to take the control from the people. The state of Pennsylvania supported a dynasty of these bosses over a period of more than half a century; first the two Camerons managed the political affairs of that state as if it were their private property; then Boss Quay took over even to the extent of using the public funds in the state treasury for his speculations on the stock market. Boies Penrose inherited Quay's mantle and dictated until he in turn yielded control to W. S. Vare. The Huey Long regime in Louisiana, the Grand Dragon Stephenson spoliation of Indiana, and the Thomas Platt rule over New York may be cited as other examples of political bossism. In the field of municipal government there have been many cases of bosses taking over the authority and managing city affairs to suit themselves. The long line of Tammany bosses in New York City, the approximately equal succession of Republican bosses in Philadelphia, the Cox-Hynicka combination in Cincinnati, the Magee-Flynn partnership in Pittsburgh, Boss Hague of Jersey City, "Poor Swede" Lundin in Chicago, the notorious "Doc" Ames of Minneapolis, "Curly Boss" Ruef of San Francisco, are but a few of the overlords who have fastened on cities like leeches.

There is a common misapprehension that a political boss differs from a political leader primarily in the extent of power which is exercised. In reality, it is not possible to classify on such a basis, for some political leaders—for example Mayor La Guardia of New York City—have wielded as much or even more authority than certain

political bosses. The chief distinction between a political leader and a political boss is the source rather than the extent of power exercised. The former receives his mandate from the people, who, if they have complete confidence, may be very generous in the bestowal of such power. The political boss, on the other hand, is not granted his authority by anyone; rather he seizes it, much as the leader of a robber band or the chief of gangsters. It follows that a political leader is responsible to the people for his acts, while a political boss answers only to himself. Political bosses may loot the public treasury, as did Boss Tweed, or they may be comparatively honest, as was Boss Flynn; but in any case their motives are largely selfish, whether it be financial gain, the satisfaction of the lust for power, or some other personal desire.

**Distinction
between
Bosses and
Leaders**

In certain cases when political parties degenerate and popular control disappears, a closely knit inner circle seizes a position of mastery. Here a small group effects substantially the same type of usurpation to be observed in the case of political bosses. There is no more justification for machine domination than for the dictatorship of bosses; in both cases the source of authority is forcible seizure, not a grant of the people. Certain political machines can point to ambitious programs of public works, to low tax rates, and to close cooperation with business interests, while others are remembered only because of their large-scale corruption. But whether a political machine be shrewd enough to take some account of ordinary standards of decency and the public weal, or whether it concentrates on the physical and financial looting of a city or state, its motives are invariably selfish. In the old days similar groups of political buccaneers were usually designated "political rings"; thus there was the Tweed ring in New York City, the Gas ring in Philadelphia, the Ames ring in Minneapolis. As in the case of political bosses, no clear case of a national machine can be pointed out. On the state level one may note the Horner machine in Illinois, the McNutt machine in Indiana, and the Curley machine in Massachusetts. The best known recent examples on the municipal level have been the Kelly-Nash machine in Chicago and the Pendergast machine in Kansas City.

**Political
Machines**

THE SPOILS SYSTEM

No fixed date can be set as the birthday of the spoils system. The term in its present form is ordinarily traced back to the oft-repeated

words, "To the victor belong the spoils."¹ But it would scarcely be accurate to assert that practices classified at present as falling within the spoils category did not exist long before the presidency of Andrew Jackson. Nevertheless, during the past century the spoils system has been firmly entrenched in American government on the national, state, and local levels, albeit with variations and ups and downs.

Its Origin The spoils system implies the disposal of public jobs, the letting of contracts for public works, and the purchase of public supplies for the benefit of a political party, political boss, or political machine. The less responsible advocates of the system of spoils entirely disregard the qualifications of those persons and firms whom they feed from the public trough. However, many of the modern exponents of the system claim that they are willing to bestow jobs only on those party workers who have reasonably satisfactory competence and to award contracts for supplies and the construction of public works only to those firms that can show that they are both deserving at the hands of the party and capable of giving a reasonable performance of service for money received. The more extreme form of spoils still continues to be the rule in many state and local governments. However, in the national government, as well as in more progressive states and cities, the refined variety is used. Of course, it need scarcely be said that the latter form is far less vicious in effect.

Essentials of the Spoils System No person who is familiar with the operation of foreign governments will deny the existence in those countries of practices similar to those associated with the American spoils system. Nevertheless, it is probably true that this system is as firmly entrenched in the government of the United States as in any of the leading countries in the world.² This is not because Americans are necessarily more dishonest than residents of foreign countries; nor is it to be explained entirely on the basis of popular indifference or general prosperity. It is, of course, true that the spoils system is encouraged when the citizens do not care what kind of a government they have or when economic prosperity is such that public expenditures and governmental efficiency can be relegated to minor

Peculiar Position of the Spoils System in the United States ¹ These words were perhaps uttered by William Marcy, but they have been associated with the administration of Andrew Jackson.

² It is not so outright as in countries such as Brazil.

importance. Some of the strength and persistence of the spoils system in the United States is probably attributable to the type of government which we have. Since the executive and legislative branches are only loosely tied together by law, there arises the necessity of an extralegal integration of the two. The President may contribute toward this end by the strength of his own personality; he may, upon occasion, call upon the people for the exertion of pressure on Congress which will temporarily lead to cooperation. But perhaps the most effective agency of solidarity has been and is the spoils system. The President is charged with the disposal of public offices and other public favors. The members of Congress are anxious to secure such morsels for their political followers. Under the principle of the separation of powers in our constitutional system, what is more natural than that the President should bestow public positions and other patronage on those congressmen who will follow his leadership? Since the separation of power in the states is very similar to that in the national government, the spoils system has the same solidifying and unifying effect on the state level. In the English government the legislative and executive branches must by their very nature work together, for the executive, the cabinet, falls when it loses the support of Parliament.¹ It may be seen that under such a system the use of patronage is far less necessary than in the United States. One cannot doubt that the comparatively slow progress in substituting merit for spoils in public employment goes back in a large measure to the lack of coordination between the executive and legislative branches.

PARTY FINANCES

Although large numbers of people are willing to expend generous amounts of time and energy on the affairs of fraternal organizations, service clubs, professional associations, chambers of commerce, and social groups without expectation of financial reward, political parties have somehow or other failed to attract similar support. That is not to say that there are no party members who are willing to perform service for the party without prospect of financial remuneration, but such persons seem to be the exception rather than the rule. This means that parties must raise and pay out large amounts of money not only for supplies,

**General
Need for
Substantial
Funds**

¹ The alternative is calling a general election to determine whether or not the people support the cabinet policies and oppose those of Parliament.

incidentals, radio time, and rent but also for personal services. The amounts required for such purposes are far less than similar amounts paid out by the single parties in the totalitarian governments of Europe—the National Socialist party of the Third Reich may spend as much on a single annual party gathering as both parties in the United States will spend on a presidential campaign. Nevertheless, substantial campaign chests are regarded as essential if victory is to be won.¹

It has not been uncommon for corrupt political bosses and machines to raise their campaign funds by looting the public treasury, by **Source of Funds** “selling” nominations to those anxious to hold elective office, by levying party taxes upon businesses subject to government regulation or anxious to secure government contracts, and by participating in the revenues of organized and protected crime. These methods, common as they may be in boss- or machine-dominated cities and states, are not, however, the general rule. Nor is the system of exacting dues from party members, as found in the single parties of totalitarian countries, in use here. Most of the campaign funds are raised by assessments upon candidates or are donated by citizens and groups of citizens who feel that it is to their interest that their party control the government. Many contribute because they expect some direct return if the party is victorious; others, particularly the small contributors, anticipate only indirect return from a government favorable to their political activities or point of view.

Large contributions to campaign chests are often made by individuals who expect direct return on their investment in the form of **Large Contributors** public office. Ambassadorships have been purchased in this fashion, much to the detriment of the morale and the reputation of the American foreign service. During the 1930's the star of Governor Earle of Pennsylvania shone brightly because his initial political activity was a large donation to the Democratic national campaign fund, while more recently Minister Cromwell entered the political scene in the same manner.

Large individual contributions are, however, ordinarily not so destructive to impartial government as those by corporation officers or

¹ It might seem from the figures subsequently given that such tremendous amounts could only be used for illegal purposes. Actually, however, when one considers the salaries of thousands of office workers needed to send out millions of pamphlets and letters, the cost of the printed matter itself, and the cost of office space, billboards, and radio time the necessity for large treasuries is readily apparent.

pressure groups.¹ Since the days of "trust busting" business has increasingly realized the intimate relationship between government and other forms of social organization. And consequently it has not been reluctant to attempt to make elective officers indebted to it. In the same way pressure groups of laborers and farmers have spent large amounts in contributions to the campaign funds of the party which they considered favorable to them. Some individuals and pressure groups have even gone so far as to contribute to the campaign funds of both parties to avoid the risk of being left out in the cold.

While the amounts that single groups sometimes contribute is tremendous—in 1936 the organizations dominated by John L. Lewis gave \$600,000 to the Democratic party—still these single contributors are not nearly enough to satisfy the vast needs. Various sorts of miscellaneous money-raising schemes are resorted to: Jackson Day dinners, individual solicitation by party workers, and letters to all-inclusive mailing lists asking for contributions of from \$1.00 to \$10. In general, however, most of the party funds accumulate from relatively large contributions, the great majority of which are not made altruistically.²

Miscellaneous
Sources

It is difficult to ascertain the exact expenditures of political parties. To begin with, the officials in charge of party expenditures are inclined to be quite secretive in regard to such matters and they consider the queries of newspaper men and students of government as impertinent. Since 1910 federal legislation has required the national party organizations to report the contributions received and the moneys paid out, and these reports throw some light on the entire subject. However, the national organizations are responsible for only a part of political party expenditures—the state and local organizations also raise and spend money in large amounts. Many states specify a public report of at least certain local party finances, but in other cases it is virtually impossible to ascertain what amounts are involved. In 1937 a committee of the United States Senate reported the party expenditures during the calendar year 1936 as follows:³

Recent
Party Ex-
penditures

¹ Corporations are forbidden by law to contribute, but there is nothing to prevent their officers from doing so with a distinct indication of the indirect source.

² For a good analysis of sources of funds in 1940, see L. Overacker, "Campaign Finance in the Presidential Election of 1940," *American Political Science Review*, Vol. XXXV, pp. 701-727, August, 1941.

³ *Senate Report 171*, Seventy-fifth Congress, first session, "Investigation of Campaign Expenditures in 1936," Government Printing Office, Washington.

Republican National Committee.....	\$8,892,971.53	
Republican State Committees.....	4,969,129.16	
Miscellaneous Republican Organizations	336,102.23	
Republican Total.....		\$14,198,202.92
(or 85 cents per vote)		
Démocratic National Committee.....	\$5,651,118.40	
Democratic State Committees.....	2,757,236.38	
Miscellaneous Democratic Organizations	820,052.05	
Democratic Total.....		9,228,406.85
(or 33 cents per vote)		
Socialist Total.....		37,635.00
(or 20 cents per vote)		
Communist Total.....		270,489.40
(or \$3.37 per vote)		
Union Party Total.....		94,742.07
(or 11 cents per vote)		
Grand Total.....		\$23,973,329.82

These amounts, however large they may seem to some readers, do not tell the whole story, for they omit the expenditures of local party organizations. No reliable statistics are available in regard to expenditures of local political organizations, but it was the opinion of the committee of the United States Senate that they probably equaled the expenditures of the national and state organizations.¹ If this estimate is accepted as reliable the total expenditures for 1936 did not fall far short of \$50,000,000.

Public opinion became sufficiently aroused following 1937 to demand more rigid federal restrictions on expenditures of political parties in presidential elections. Senator Hatch of New Mexico introduced a bill which, after much delay, long drawn-out discussion, and the addition of amendments, finally became law in 1940. This act attempted to restrict the maximum expenditures of a single party in a presidential election to \$3,000,000. The act does not, of course, set up regulations in regard to local-election expenditures; for this field does not come within the scope of federal action. It is apparent from the reports thus far made that the Hatch Act did not prove effective in 1940 in limiting party expenditures to \$3,000,000 or less—indeed Senator Gillette, chairman of the Senate committee

¹ *Senate Report, op. cit.*

investigating the 1940 election, stated that "close to \$35,000,000" was spent on the two candidates.¹ Loopholes in the act and the short notice that the parties received of such a limitation account for expenditures in excess of the legal maximum, although it may be noted that the totals, particularly in the case of the Republican party, were below those of 1936.² In 1941 Senator Gillette proposed legislation that would limit expenditures in behalf of a candidate for President to \$2,000,000 and half that amount for vice-presidential nominees.

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¹ *New York Times*, August 15, 1941.

² The "Willkie for President" Club, although supporting the Republican nominee, was not connected financially with the party and hence its expense was not covered by the Hatch Act. It might be said in connection with that organization that, when Mr. Oren Root, Jr., announced the return of many contributions that came to it too late for use in the campaign, he broke all precedent in political financing.

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CHAPTER X

NOMINATIONS AND ELECTIONS

THE NOMINATION PROCESS

WITH the exception of the selection of candidates for the presidency and vice-presidency, the nomination process is organized on a state basis. Even senatorial and congressional nominations are handled by the states rather than by the national government. Indeed, until 1941 it had been held by the Supreme Court that, although the national government could lay down certain regulations having to do with elections of Senators and Representatives, it could not interfere with the preliminary stage: that of nominating candidates.¹ In May, 1941, in a Louisiana case the Supreme Court was impelled to take cognizance of the intimate relationship existing between the nomination and election of public officers and, reversing its position in the *Newberry* case, decided about twenty years earlier, held that the national interest in the nomination process was so vital as to justify federal safeguards.² Nevertheless, it is still the states that set up the machinery for or confer upon the political parties the power of making nominations.

During the history of the republic several methods of encompassing the nomination of candidates for public office have been tried, but for some years only two devices have been in general use: the party convention and the direct primary. A third system, that of nomination by petition, has not been widely adopted, but it is to be encountered in certain important cities.

During the nineteenth century nominations for public office were in most cases the handiwork of party conventions. However, the defects of party conclaves received so much publicity and aroused so much hostile criticism that there has been a widespread trend toward the direct primary. It was asserted that party conventions were controlled by political bosses, that nomina-

Largely a
State Mat-
ter

Two Gen-
eral
Methods
of Making
Nominations

The Party
Convention

¹ *Newberry v. United States*, 256 U. S. 232 (1921).

² Justice Stone delivered the opinion. The court divided four to three in this case.

tions were "sold,"¹ and that the ablest candidates were passed over in favor of machine henchmen.² Although there has been some movement in the direction of resuscitating the party convention as a nominating mechanism, notably in New York and Indiana, most of the states have almost if not entirely abandoned this technique. Only Connecticut and Rhode Island continue the convention system of making nominations all the way down the line, while the majority of states no longer make any use of this plan either for state or local elective positions.

Recent experience indicates that nominations made by the party convention vary widely in quality; even within a single state there may be considerable divergence, with certain cases of excellent nominations being flanked by distinctly inferior ones. In general, the record of party conventions in this field is definitely less consistent than is that of the direct primary. If the party convention is functioning at its best, it is probable that abler men will have a chance of being picked than under the leveling influence of the direct primary. On the other hand, at its worst the convention system can produce nominations that are probably inferior to those produced by the other method. Unfortunately, the party convention does not frequently operate under anything like ideal conditions, with the result that its selections particularly on the state and local levels are by no means outstanding. Examining the record of one state, Indiana, which has made use of both the party convention and the direct primary for selecting state candidates, there seems to be little basis for assigning marked superiority to either.

The details of the convention system as used in nominating candidates for President and Vice-President have been discussed in connection with political parties.³ As used on the state or local levels the system is much the same, although, of course, it is organized on a smaller scale. Delegates representing the local party organizations or elected directly

**Accom-
plishments
of Con-
ventions**

**Mechanics
of the Con-
vention
Method**

¹ For a long time it was the custom of Tammany Hall to require that those, for instance, who wished to be nominated for judgeships contribute \$10,000 to the party campaign funds. Practices such as these were naturally interpreted as "sales."

² Lord Bryce, the great English commentator on the American political system, partially blamed nomination by convention for the supposedly low standards of the American presidency. See his *The American Commonwealth*, rev. ed., 2 vols., The Macmillan Company, New York, 1910, Vol. I, Chap. 8.

³ See Chap. 9.

by the party members gather together in a state convention when an election is in the offing to choose the party slate of candidates. Local conventions are of several varieties—for example, city, county, and congressional district—and theoretically at least are somewhat closer to the rank and file of party members than is the case with state or national conventions. Whether conventions be on the national, state, or local level, the formal process calls for nominations from the floor and selection usually by an ordinary majority vote of the delegates. Actually decisions are usually made by small groups of party leaders meeting in the privacy of a hotel room who leave only the formal, perfunctory balloting to the delegates. The very secrecy and informality of these sessions makes for a certain irresponsibility and manipulation and permits noxious influences to creep in.

In order to escape the boss and big business domination associated with the party convention, a preliminary election known as the "direct primary," which at least in theory places the responsibility of making nominations on the rank and file of the voters, was devised. Three different varieties of direct primary—the "open," the "closed," and the "nonpartisan"—have been used more or less extensively by the various states, but in every case nominations are supposed to be made directly by the voters.¹

During the early years of experimentation with the direct primary, the open form was frequently used. Minnesota, Wisconsin, Montana, and Washington continue to employ this type of primary, but the other states prefer a more restricted arrangement, at least one that on the surface places more safeguards around the nominating process. The open primary raises no question as to the party affiliation of those who participate, thus freely permitting Democrats to take part in Republican primaries and vice versa. The open primary is severely criticized by some observers because it permits the unhampered use of the practice known as "raiding," which involves the wholesale migration of the voters of one party to the primaries of the other for ulterior purposes. When there is no particular contest within one party for the most important nominations, there is the temptation for large numbers of members of that party to "raid" the primaries of the opposing party in order that weak candidates may be nominated who in the final election will be defeated

¹ The outstanding work on primaries is C. E. Merriam and Louise Overacker, *Primary Elections*, University of Chicago Press, Chicago, 1928.

easily. Although only four states now cling to the outright form of the open primary, a good many other states have adopted such lax closed primary regulations that there is actually comparatively little distinction to be observed. In these latter states the voters of one party are not supposed to participate in the primary of another party, but the barriers erected to prevent such shifting are so ineffectual as to be almost, if not entirely, useless.

The most widely used form of the direct primary is that which is known as the "closed primary." Under this setup Democrats are expected to confine themselves to Democratic primaries and Republican voters are limited to Republican primaries. The basic principle underlying the closed primary is that a political party should be protected from the predatory invasions of rivals. As has been pointed out above, no adequate machinery for enforcing such limitations has been provided by many of the closed-primary states. In order to render the closed primary effective it is necessary that the voters declare their party affiliation when they register and that this information be used in determining the party primary in which they participate. It may be objected that such a requirement would prevent cases of bona fide transfer from one party to another. New York, which has one of the most effective closed-primary systems, allows such a shift of party affiliation, but requires that those voters abstain from taking part in the primary immediately succeeding their political migration.

In jurisdictions in which nonpartisan elections have been set up, provision must be made for a harmonizing type of direct primary; for it would obviously be absurd to have nominations made on a partisan basis and party designation not permitted on the election ballots. To meet such a need the nonpartisan primary has been developed, which extends no formal recognition to the existence of political parties. Under the nonpartisan primary only a single primary ballot is used and voters are permitted to indicate a choice of any candidate. The two candidates receiving the largest number of votes for each office are declared to be the nominees and their names are placed on the ballots of the final election.

Irrespective of the type of direct primary, candidates ordinarily get their names on the official ballots by filing petitions which are signed by a specified number of voters, varying from 0.5 per cent to 10 per cent of the electorate. Although at one time primary ballots were

prepared and furnished by the political parties, it is now generally the custom to have official ballots printed at public expense. Moreover, the officials who conduct the primary elections and count the votes are now regularly appointed as public officials and compensated out of public funds.¹ The selection of candidates under the direct primary is supposed to represent the free and unhampered choice of the rank and file of party members, but in a good many instances this is scarcely what transpires. When political machines dominate, it is invariably the custom to put up a machine slate which is given the backing of all the patronage, campaign funds, and the powerful organization maintained for getting out and controlling the vote.² Even when political machines are not in control, it is not uncommon for political organizations to let it be known that they favor certain candidates. It must be obvious that such practices strike at the very heart of the direct-primary system. When such manipulation exists direct primaries display the same boss control, the same irresponsibility, and the same incompetent candidates that are frequently associated with convention nominations.

Operation
of Direct
Primaries

Proponents of direct primaries long advanced the most eloquent arguments, promising that such an arrangement would eliminate most of the evils connected with the election process. The results have fallen far short of expectations, for many jurisdictions have evidenced little or no improvement. It is interesting to note the bitter opposition to the direct primary of such political worthies as Boss Murphy of Tammany Hall in light of the subsequent highly successful career of Boss Murphy under the primary system—his control over New York City reached heights never attained under the convention plan. However, although the achievements of the direct primary have been disappointing, it is fair to say that they have been at least equal to and probably superior to those of the party convention.

Record of
the Direct-
primary
Method

¹ The candidate who has a plurality if not a majority is in most states declared to be the party nominee. However, in eleven southern states, in which because of Democratic dominance the primary is tantamount to the election, a majority vote is needed to secure the nomination. If no single candidate receives a majority, a "run-off" primary is held for the two who had the highest number of votes. In South Dakota and Iowa, when no candidate for nomination has a plurality of at least 35 per cent of the party vote, the choice of a nominee is left to the party convention.

² For an interesting description, see H. F. Gosnell, *Machine Politics: Chicago Model*, University of Chicago Press, Chicago, 1937.

Although the direct primary and the party convention cover most of the field, one cannot ignore the petition system of making nominations. None of the states has seen fit to set up such a system for the selection of state officials, but a number have established such arrangements for certain of their local governments. In cities as widely separated as Boston, Pittsburgh, Cleveland, and San Francisco, municipal officeholders are nominated by petition. This plan provides for only the final election and authorizes the inclusion on the ballot of those candidates who have filed with the proper public officials a petition bearing the signatures of a stipulated number of qualified voters. The number of signatures required varies somewhat from city to city and even from office to office within a single city, but in general the requirement is not particularly onerous. In a large city those aspiring to seats on a city council may usually get their names placed on the ballot if they can offer from one hundred to five hundred or more signatures, while candidates for mayor may be expected to tender several thousand. After these petitions have been duly checked by the designated public officer and the number of bona fide signatures has been verified, the name is forthwith placed on the ballot. This system has the advantage of eliminating much of the expense which is often attendant upon direct primaries; it also renders it reasonably easy for any aspiring candidate to get his name before the people. However, it may make for such large numbers of candidates as to occasion some confusion in the minds of the voters and to lead to the election of candidates supported only by a minority.¹ Moreover, nomination by petition does not eliminate the control by political bosses and machines or the undue advantage enjoyed by those candidates who have the support of political parties.

REGISTRATION OF VOTERS

Before an election can be held, provision must ordinarily be made for the registration of voters. In theory, any person who possesses the qualifications of citizenship, age, and residence should be permitted a ballot on election day.² But experi-

**Purpose
of Regis-
tration**

¹ In Boston it is not uncommon for ballots to list six or eight candidates for mayor, together with a generous array of candidates for seats on the city council. Some of these have little or no support, but even so plurality elections are the rule rather than the exception.

² For tables showing qualifications and disqualifications in various states, see S. D. Albright in the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, pp. 100-103.

ence has proved that it is not feasible to depend upon the applicant's own statement. Nor is there sufficient time amid all the confusion which characterizes most polling places to check on such qualifications during the few hours that the voting takes place. In some countries such as Japan, official identification cards are furnished each qualified person, and these may be proffered as proof of the privilege to vote. But the United States has made no provision for such identification, apparently preferring to rely on the safeguard of registration. In those rural areas in which every voter is personally known to the election officials, there is no particular necessity for registration; but in urban centers, where people may not be able to name the occupants of the apartment houses in which they reside, the situation is very different. In the absence of some means of ascertaining the qualifications of voters, whole trainloads of bums have been imported from a near-by city by a desperate political boss in order to control an election. At the present time, therefore, virtually all states require personal registration of voters, at least in urban areas.¹

The older system of registration requires every qualified voter who expects to participate in an election to register in person every two or four years. Such registration must be effected within the period specified by law, usually ending about one month before the date of the election. It may also necessitate a visit to a central office, which in large cities may mean a long and wearisome wait in line. In order to minimize the inconvenience to the voter there has been a disposition to supplement central registration with neighborhood places of registration. While these local offices may be open only during a few days, those who do not take advantage of the service may still accomplish registration by visiting the central office.

During the last decade there has been a strong movement toward substituting permanent registration for periodic registration. The inconvenience to the voter of periodic registration, the failure to register which has caused many otherwise qualified citizens to lose their vote in an election, and the public expense involved in the registration of large numbers every two or four years have been mentioned as the basis of arguments for this substitution. Where permanent registration is provided the qualified

Periodic
Regis-
tration

Permanent
Registra-
tion

¹ For a good study of registration provisions, see J. P. Harris, *Registration of Voters in the United States*, Brookings Institution, Washington, 1929.

voter finds it necessary to register only once, unless he changes his place of residence or causes his name to be dropped from the voting lists by failure to vote in two successive elections.¹ There can be little doubt that permanent registration has made the exercise of the suffrage distinctly more convenient to the voter. Moreover, after such a system has been set up, registration costs ordinarily drop sharply.² The chief defect thus far apparent in permanent registration is the tendency of the lists to become filled with the names of those voters who have moved their places of residence or died. Voters transferring their residences are supposed to notify the registration officials, but they apparently do this only in exceptional cases. Registration officials attempt to keep the lists as up to date as possible, but they are usually not given the facilities to accomplish this duty. Where failure to vote in two successive elections automatically results in canceling registration large numbers of names are stricken from the voting lists. But even so there is the problem of those who have recently moved from their precinct or died. The result is that the registration records ordinarily show a considerably larger number of voters than the number of those actually qualified to vote. This state of affairs becomes serious only when a corrupt political machine attempts to make use of the names of those who have transferred their residence as a basis for "impersonation" and "repeating."

Considering the fact that the American voter is the most heavily burdened both in number of elections and in responsibility attached to them of any of the voters of the world, it is certainly not improper to place reasonable emphasis on his convenience. A registration system which requires a special visit to the city hall and entails an irritating wait in line leaves something to be desired. If periodic registration is to be expected, it seems only sensible to extend registration facilities to neighborhoods. Also, adequate periods of time should be allowed. On the other hand, one must not lose sight of the fact that the primary purpose of registration is not the convenience of the voter but the safeguarding of elections; otherwise registration could be abandoned entirely. Since the protection of the purity of elections is uppermost, it is particularly important that the registration lists be kept free of

**Essentials
of an Ade-
quate Reg-
istration
System**

¹ Not all states include such a provision in their permanent registration laws.

² For comparative figures see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, p. 195.

"padding." Where registration lists include the names of many persons who are no longer bona fide voters, a very real temptation is presented to unscrupulous politicians who fear the loss of an election. In certain localities, where political bosses and machines have seized the power, it is common knowledge that voting lists which are based on registration records have been padded over a period of years to the extent of anywhere from 15 to 30 per cent. Cases have been discovered where fire horses have been registered as voters, where names have been copied from tombstones for the registration lists, where a dozen or more imaginary persons have been registered as residing on vacant lots. When the henchmen of a political machine impersonate these spurious names, sometimes repeating to the extent of casting ten or more ballots illegally in a single election, it must be apparent that elections are scarcely honest expressions of the public will. Registration officials cannot be expected to keep their records up to date and free from padding unless they are furnished adequate staffs for that purpose. It may be added that only in exceptional instances have such facilities been made available.

ELECTION PROCEDURE

With the rise of totalitarianism in so many parts of the world, elections have become less important than perhaps at any time since the beginning of the nineteenth century. Some of the Fascist countries, such as Italy, have dispensed with them entirely; in others, notably Germany and the Soviet Union, elections are rather meaningless affairs. In the United States elections not only continue to display apparent vigor but they are scheduled at more frequent intervals than in any other country of the world. Presidential elections come every four years; elections to choose national legislators and state officials every two years; while local elections usually occur biennially and frequently apart from general elections. When one adds to this array the primary elections which are commonplace in most of the states, the system becomes elaborate indeed.¹

At an earlier period in the history of the United States there was considerable variation in the time of holding even general elections. However, at the present time, general elections are, except in the case of Maine, scheduled on the first Tuesday after the first Monday in November of the even years. Never-

**Time of
Holding
Elections**

¹ For a good discussion of election procedure see J. P. Harris, *Election Administration in the United States*, Brookings Institution, Washington, 1934.

theless, when one takes into account the local and the primary elections, there is still considerable diversity in practice. Some states set primary elections as early as April; many prefer May; while in other cases it is not until late summer or even autumn that the primaries are run off. Municipal elections may be held at the same time as general elections, or they may be set for the fall of odd years or during the spring.

For the purpose of holding elections the states are divided into voting precincts¹ which, although varying in population, ordinarily include from three hundred to eight hundred voters, depending in a large measure on the density of population. Precincts with fewer than one hundred and more than a thousand voters may be encountered, but they are the exception rather than the rule. Occasionally in cities in which there has been a shift in population the number of voters in a precinct may be small; for example, New York City has for several years maintained a polling place to serve a single voter who is the sole night-time inhabitant of a business section which was at one time populous.² In general, however, the size should bear a definite relationship to voting convenience, that is to say, no more voters should be placed in one precinct than can vote at a single polling place without difficulty during the course of a day. If voting machines are in use, a larger number can be properly included than if paper ballots are employed, for the former method requires less time from each voter. If most of the voters spend the entire day in the vicinity of the polling place, it is legitimate to extend the boundaries to take in more people than could be fairly included when many of the voters work several miles away in an office or an industrial plant. In each precinct a polling place is designated, which may be either in connection with a public building or on private premises. A few precincts have experimented with portable buildings which are set in place temporarily for election purposes, but the great majority of polling places are in rooms of buildings ordinarily used for other purposes.

Each polling place is usually put in charge of from three to seven officials who are appointed, regulated, and compensated under the

¹ These are identical with the precincts discussed in connection with the organization of political parties. See Chap. 9 above.

² A voting machine and a full complement of election officials are provided for the convenience of this one voter—at a cost to the public of more than \$100, but this is a very exceptional case.

terms of the election laws of the state concerned. With the assistance of the police authorities these officials maintain order, determine whether applicants are qualified to vote, keep records, give out ballots, assign voting booths and voting machines, watch ballot boxes, and after the polls close count and tabulate the votes.¹ After the results have been ascertained, returns are made to central offices designated by law where the complete results are compiled. It is the general practice to specify that these polling officers shall be chosen from the two major parties, with the party in power having a majority. The inspectors, judges, clerks, and sheriffs who make up the polling officials usually receive from \$3.00 to \$9.00 per day for their services out of public funds.

In previous times voting has sometimes been by voice, by the use of colored beans, or on the ballots supplied by political parties, but almost everywhere now the Australian type of ballot is employed.² These ballots, always officially prepared and implying secrecy in voting, display a great deal of variation. Some of them are scarcely larger than a post card; others approximate a tablecloth in size. Some are printed on white paper,³ while others are on yellow, pink, blue, or buff paper. The most important difference characterizing the ballots used in the United States relates to the arrangement of the names of the candidates.

The Indiana type, now used in thirty of the states, places the names in party columns, the first of which goes to the party that won the last election. Candidates for the higher positions come first in the column, while the candidates for the less important offices follow by gradations. It is the custom in fifteen states to place the party emblem—a rooster, a donkey, an elephant, a fountain of water, two hands clasped, and so forth,—over each party column. Immediately below the party emblem there is usually a large circle (or square) which when marked means the casting of a straight party

¹ In a few cases, provision is made for the central counting of votes. Under proportional representation such a method of counting is always necessary. However, even in the absence of such a system, central counting may be specified, as is done in the largest cities of Indiana.

² South Carolina, which uses party ballots, is the only state which does not at present use the Australian ballot in some form. For a detailed discussion of this topic, see E. C. Evans, *A History of the Australian Ballot System in the United States*, University of Chicago Press, Chicago, 1917.

³ Six states use colored paper; thirty-nine states use white paper; and two use paper watermarked with a secret device. See *Book of the States, 1941-1942*, p. 99.

vote.¹ Smaller circles (or squares) placed opposite the names of individual candidates permit the casting of votes for candidates of either party. A few states, for example Montana, although using the general Indiana form, omit the circle or square at the top of the ballot. It is not difficult to perceive that the Indiana form, unless modified as in Montana, encourages the voting of a straight party ticket.

A second type, adopted by seventeen of the states, is known as the "Massachusetts ballot." States that use this variety group the names of candidates according to the offices which they seek. Such an arrangement leads, it is asserted, to a "split vote," inasmuch as the voter must place a mark after the name of each candidate for whom he desires to vote. Pennsylvania arranges the names of candidates according to office, but also lists the parties, providing a space opposite each which may be used to cast a vote for all the candidates of that party. Under the Massachusetts form the political affiliation of candidates is usually indicated, but where nonpartisan elections are in use the names of candidates appear without such designation.²

Approximately half of the states make some provision for the use of voting machines.³ Although the larger cities account for most of the voting machines in the United States, less populous areas are increasingly adopting them. Superficially examined, it might be supposed that a voting machine constitutes a radical departure from the conventional American methods of voting. Actually, however, the machine is based on the Australian system and may use the principle of either the Indiana or Massachusetts types of paper ballots. Under the traditional scheme the voter is given a paper ballot which has been initialed on its back by two or more of the polling officials. He takes this to a vacant voting booth, marks it with a blue pencil, folds it in such a way that the initials of the polling officials are discernible, and either places it himself in a ballot box or hands it to an official for such a purpose. In those places where voting machines are used, the voter is directed to a voting machine which is not in use.

¹ Twenty-eight states make provision for straight party voting.

² Forty-four states provide for party designations on the ballot.

³ The chief reason they are not more widely employed is their high cost. Considering, however, the advantages that accrue from their use in that they are relatively hard to manipulate and to "stuff" and in that they prevent spoiled ballots, it would seem that they are well worth the expense. Twenty eight states have voting machine legislation, but in only twenty-one states are the laws currently in operation. See the *Book of the States, 1941-1942*, p. 99.

Here, behind a curtain, he either pulls a large lever which casts a vote for a straight party ticket, or after indicating his respective choices of candidates, pulls a lever which will register a vote for these candidates. When paper ballots are employed, there is the considerable problem of ballots which are spoiled because the voters have mutilated them, indicated two candidates for the same office, or marked them with extraneous writing. At times as many as 15 or 20 per cent of the paper ballots must be thrown out because they have been spoiled in the process of voting. Voting machines may be somewhat terrifying to nervously inclined persons, but they obviate the possibility of spoiled ballots because no remarks may be registered on them and a mechanical contrivance makes it impossible to indicate choices of two candidates for the same office.

All of the states with the exception of Kentucky, Mississippi, and New Mexico make some provision for absentee voting,¹ though in twelve other states restrictions of one kind and another **Absentee Voting** seriously limit the use of this device. The thirty-three states which permit qualified voters who are absent from their places of residence on election day to vote in general, local, and special elections, including direct primaries, are far from uniform in their detailed practices, but they ordinarily agree on general principles.² To begin with, application for this privilege must be made to the proper officials—the county clerk, the city clerk, the voting commissioners, or other public officers charged with election administration—not less than a specified time before election.³ In some states it is required that the absentee voter must be at least a given distance away from home on election day in order to be granted the concession, the argument apparently being that one who is merely a few miles away in an adjoining county can return without too much trouble to cast a ballot. Absentee ballots may be delivered directly to the voter or they may be mailed to a public official who has responsibility for the conduct of elections in the place where the applicant expects to be; in any case it is ordinarily stipulated that the absentee voter must go before a notary or some other public officer to mark his ballot or to take oath that he has met

¹ In New Mexico and Kentucky absent-voting laws have been held to be unconstitutional.

² A very convenient and up-to-date source of additional information in regard to the requirements of the various states is James K. Pollock's *Absentee Voting and Registration*, American Council of Public Affairs, Washington, 1940.

³ The minimum time specified varies from state to state, but it is often anywhere from a week to two weeks.

the legal requirements. The marked ballot must be placed in a sealed envelope and returned to a designated office, often by registered mail; it must reach that office on or before a specified date to be counted.

If the election returns show that two candidates have run "neck to neck" or if there is evidence of fraud, the defeated aspirant may demand a recount of the votes or in some other way "contest" the election. Such action may be placed under the jurisdiction of ordinary courts or election commissions may have the general authority, but in any case probable cause must be shown by the contender. Some states permit a liberal resort to recounts of the votes if the interested persons are willing to put up a bond to pay the costs involved in case the retabulation indicates the same results. Occasionally a very shocking state of affairs is revealed which leads to a new certificate of election; but, since most recounts are apparently induced by the bitterness of defeat, they produce no major changes in total results. Inasmuch as disputed elections are always a possibility, ballot boxes are usually sealed up after the initial count and preserved intact for several weeks or months, or until it has been determined whether they will be needed in connection with a contested election.

A study of the history of American elections will reveal a fairly large number of irregularities and occasionally even shocking frauds.

Election Frauds Where political bosses and machines batten themselves on the people, there is almost always a certain amount of corruption in elections. The stakes are high and scruples are lacking, hence anything goes. As long as bosses and their henchmen are riding high, there may be little incentive to indulge in various sorts of tampering with the ballot boxes, although some regimes are so thoroughly corrupt that they seem to employ improper practices on general principles. Virtually every such aggregation of political buccaneers sometime or other is faced with a popular revolt and defeat, the prospects of which are terrifying. In such instances it is scarcely to be expected that honest elections will be held unless there is the greatest vigilance on the part of the people. Repeating is likely to reach large proportions; the buying of votes will be commonplace; corrupt election officials will tamper with the ballots, mutilating those of opponents, adding spurious ones that favor their candidates, and occasionally totally disregarding the sentiments of the voters by falsifying returns. If the police authorities are sympathetic to the desperate machine, it is probable that no attempt will be made to maintain even a semblance

of order. "Plug-uglies" will frequent the approaches leading to a polling place and without interference molest and even "knock out" machine opponents.¹ Despite the election laws which prohibit any but election officials to remain within the confines of the polling places except for the purpose of voting, henchmen of the boss will go in and out of polling places with impunity, sometimes arrogantly giving orders to the election officials as to what they are to do.

While the situation is by no means without blemish at present, extreme cases of fraud are definitely the exception rather than the rule. In almost any election there are likely to be minor irregularities, for some dishonest persons are always able to squeeze themselves in as polling officials, but one should not conclude from this that election frauds are now commonplace in the United States. More adequate election laws, the activities of the Federal government in those elections where presidential electors or congressmen are being chosen, and the more responsible attitude on the part of the general public, have combined to obviate extreme cases of dishonesty, save in rare instances.²

ELECTION REFORM

The national government and the states have given considerable attention to the passage of legislation regulating the conduct of campaigns and elections. Almost any state can boast now of election laws which fill a printed volume of several hundred pages. The national government has not legislated in anything like that detail on the subject of elections, but it has passed some important general laws dealing with those elections in which federal officials are being chosen. We have already noted the recent attempt of the latter government to limit the amounts expended by the major parties in connection with presidential elections.³ In addition, the national government has in the same Hatch Act prohibited holders of positions paid in whole or in part out of federal funds from occupying offices in party organizations, delivering political addresses, or otherwise actively engaging in political activities.⁴ An earlier regulation

**Recent
Progress**

**Corrupt-
practices
Legislation**

¹ For examples of such practices, see Harold Zink, *City Bosses in the United States*, Duke University Press, Durham, N. C., 1930, pp. 302ff.

² Even during the 1930's, however, wholesale dishonesty and fraud in elections was discovered in Kansas City, Missouri, which was under the domination of the Pendergast machine.

³ See Chap. 9.

⁴ There is some difference of opinion as to exactly who are included under the provisions

had imposed such a limitation upon civil service employees, but not until 1940 were such federal officials as attorneys, marshals, collectors of internal revenue, and housing executives brought under this provision.¹ Another rule forbids the soliciting of federal employees for campaign contributions by other officials of government.²

Corporations chartered under national legislation may not make political contributions at all, while other corporations are forbidden to assist in the financing of campaigns involving the election of a President, a Vice-President, Senators, or Representatives. The Federal Corrupt Practices Act of 1925 lays down certain restrictions bearing on the expenditures of candidates for senatorial or congressional seats. Senatorial aspirants are limited to a maximum expenditure of \$10,000 and house candidates to \$2,500, but if a state law fixes a smaller amount that maximum is substituted. Candidates are permitted an option which fixes the basic expenditure at 3 cents for every voter, as measured by the combined vote of all candidates for the position in the last election, provided that in no case shall a candidate for the Senate lay out more than \$25,000 or one for the House more than \$5,000. It may be added that these amounts do not include the expenditures of friends and political followers, which, of course, leaves a very big loophole. Finally, the Federal government stipulates that all candidates for the Senate and House shall report to the secretary of the former or the clerk of the latter an itemized statement of amounts received and expended. Political parties, organizations, associations, and groups which carry on activities in two or more states must also report under oath their financial conditions.³

The state regulations on this subject vary widely, with some states going rather far in imposing adequate limitations and others permitting

of this act. Are university professors who draw, say, \$150 per year from federal funds, bound by it? For a discussion of this question, see Joseph R. Starr, "The Exemption of Teachers from the Hatch Act," *Bulletin of the American Association of University Professors*, Vol. XXVII, pp. 329-336, June, 1941.

¹ The original desire of many proponents of the Hatch Act was to include W.P.A. workers within its provisions, largely because of the publicity given to the revelation of the use of W.P.A. to bring pressure on voters in the Kentucky senatorial election of 1938. However, the act as finally passed did not include the workers themselves but merely W.P.A. officials.

² In some of the states public employees are expected to pay from 2 to 5 per cent of their salaries into the party campaign fund. The "Two Per Cent Club" of Indiana created by Governor McNutt and his Democratic colleagues in 1933 collected several hundred thousand dollars in this manner.

³ For additional discussion of federal regulations, see E. R. Sikes, *State and Federal Corrupt Practices Legislation*, Duke University Press, Durham, N. C., 1928.

considerable laxity to exist.¹ In addition to setting up general standards relating to amount of expenditures by candidates, states forbid the buying of votes, voting more than once, tampering with the ballot box, treating voters with liquor, intimidating voters by uttering threats, and similar practices. The more responsible states go so far as to forbid the offer of transportation to the polls. Promises of jobs or other considerations after election in return for support at the polls are almost uniformly made illegal.

State
Corrupt-
practices
Legislation

Anyone who has circulated around at election time knows that corrupt-practices legislation is frequently violated in spirit if not in letter. The buying of votes is still prevalent in those precincts inhabited by certain foreign groups, Negroes, and the very poor. It is common knowledge that cigars and whiskey are passed out by political organizations and candidates. Promises of after-election reward are frequently made by eager candidates. Public employees ignore the law and bend every effort to assist their parties in remaining in power, with the blessing of those who occupy positions of outstanding importance in the government. Even the national parties evaded the spirit of the Hatch Act in 1940 by exceeding the \$3,000,000 maximum stipulated. Corrupt-practices legislation is framed and enacted by men who are themselves politicians and they quite naturally sometimes see to it that convenient loopholes are provided. Nevertheless, it would be a mistake to assume that such rules and regulations have accomplished no useful purpose. Elections are now more honest than ever before, and this may be attributed to some extent at least to corrupt-practices legislation.

Effective-
ness of
Corrupt-
practices
Legislation

In many states the voter has been called upon to do more than may reasonably be expected of him. Sometimes he is presented with a ballot which approximates a tablecloth or even a bed sheet in proportions and which contains the names of a hundred or more candidates, along with constitutional amendments and direct legislation on which he is supposed to vote. In other states no single ballot is so large, but he may find himself in possession of as many as five or six different ballots. Even those who make a serious effort to inform themselves about the qualifications of the candidates are likely

The Short
Ballot

¹ A great deal of assistance in securing detailed information may be obtained from H. Best, comp., *Corrupt Practices at Elections*, Senate Document 11, Seventy-fifth Congress, first session, Government Printing Office, Washington, 1937.

to discover certain names on the ballot which they have never seen before. It may be wondered whether the average voter is familiar with the strength and weaknesses of half the candidates whose names are presented to him at the polls. Such a situation encourages straight party support or requires blind voting in many instances. Any experienced political hand will testify that first place on the list of candidates for a certain position is good for a substantial number of votes. How can this be explained except on the basis that many voters having no information mark the first name on the list? Again it is well known that a familiar Irish name in a locality inhabited by Irishmen, a German name in a German community, and so forth, will be able to attract a goodly number of votes. Critics of the traditional long ballot praise the English ballot, which is about the size of a post card and lists perhaps three to six candidates, and contend that the United States would do well to adopt a similar form. Cutting down the length of American ballots is dependent upon the elimination of minor public offices from them by substituting appointment for election. However, both state and national constitutional provisions, laws, and the psychology of large numbers of citizens militate against any reform as far-reaching as the English. However, despite the hurdles, some progress has been made in reducing the burden imposed upon the voter.

The task of the voter has been more than ordinarily heavy in the United States, not only because of the long ballot but because of the frequency of elections. What with regular elections and primary elections, general elections and special elections, elections for the choice of national and state officials, city officers, and county and special district executives, it seems that elections are always in the offing. It would be possible to reduce the number by doing away with the primary elections or combining national and state elections with local elections, but the price might be high. Something has been done by extending terms from one to two years and in many instances even to four years. The consolidation and elimination of special districts may also contribute toward such an end. However, the prospects for any substantial relief in this respect are not too bright. There is some reason to assert that the sympathy expended on the voter has been misapplied. One cannot deny that the long ballot imposes a burden which the voter simply cannot be expected to carry with any ease, for it is unreasonable to ask a choice among a hundred candidates as well as an expression of opinion on

a half dozen or more measures.¹ But considering the importance of voting and the record of the average citizen in attending weekly luncheon clubs, religious services, amusement offerings, and so forth, it does not seem that going to the polls on an average of perhaps once each year constitutes any great hardship.

Democratic government presupposes majority rule; yet it is alleged that many, if not most, of our elections are of the plurality rather than of the majority variety, since the successful candidate is usually the recipient of only minority support. Moreover, it is maintained that there is something wrong with a system which throws so many votes entirely away; the thesis is maintained that every vote should help elect someone to office. Preferential and proportional voting have been devised to correct these alleged weaknesses in the traditional system. Preferential voting is used in connection with the election of officials, such as mayors, treasurers, clerks, and auditors, where only a single incumbent is to be named. Under such a method of voting it is possible to indicate first, second, third, and even lower choices. If no candidate receives a majority of first-choice votes, the second-choice votes will be counted and added, and this process will be continued until one candidate has majority support.² Proportional representation is based on a similar principle and differs from preferential voting mainly in that it is applied to the election of members of city councils and other bodies where several choices are to be made. Many European countries have experimented with the "list" type of proportional representation, with questionable satisfaction in most cases.³ In the United States a modified form, known as the Hare system, has been adopted by such cities as Cincinnati, New York, and Cleveland.⁴

THE RECALL

The recall has been devised as a means of checking irresponsible public officials who receive their positions through election. In extreme cases the impeachment process may usually be employed to get

¹ California has asked the voters to pass on even more measures.

² On this topic, see R. M. Hull, "Preferential Voting and How It Works," *National Municipal Review*, Vol. I, pp. 386-399, July, 1912. More than fifty cities have used preferential voting; among the best known are Columbus, Cleveland, San Francisco, Denver, and Portland.

³ For additional discussion of "P.R.," see Chap. 39.

⁴ For a favorable evaluation, see C. G. Hoag and G. H. Hallett, *Proportional Representation*, rev. ed., National Municipal League, New York, 1940. Cleveland abandoned "P.R." after a brief trial.

rid of corrupt officials; in other instances the courts may intervene and terminate the public careers of dishonest public servants by sending them to prison.¹ If sufficient patience is possessed, it is always possible to wait until the next election comes around. However, these controls are not entirely adequate, particularly when elective officials are anything but satisfactory, yet shrewdly avoid going to such extremes that prison sentences or impeachment might ensue. If the recall is available, holders of public office may think twice before acting irresponsibly; in the event that they cross a certain line public sentiment may become so aroused that they will be removed from office under the recall.

When it appears that a public servant has proved unworthy, a recall petition is drafted and circulated for signatures among the qualified voters—from 10 to 35 per cent of whom must sign if the next step is to be taken. If the required signatures are forthcoming the petition is lodged with the city clerk or some other officer designated by law. Here the petitions are checked to ascertain whether the legal requirements have been met; and, if that hurdle is passed, a special election is called within a month or thereabouts—that is, unless a regular election is near at hand. In this recall election the voters do not ordinarily express themselves as favoring or opposing the removal of the official under fire, although such an arrangement would seem logical. Instead they are given the opportunity to indicate a preference among several other candidates who have been nominated by petition along with the incumbent. If the person holding the office receives the largest number of votes, it is said that the recall has failed; if another candidate has polled the most votes, then the incumbent must surrender his office.²

Those who led the fight for the introduction of the recall were very sanguine in their hopes and predicted far-reaching advances in governmental standards. During the years between 1908 and 1926 they were instrumental in persuading twelve states to accept the recall for at least certain local offices—there has been no addition to the list since 1926.³ A definitive study of the use

¹ Conviction on felony charges may or may not automatically have the effect of terminating the holding of public office. In those cases where officials are put in prison, they at least cannot very well exercise their functions.

² However, some recall systems provide two elections: one to determine whether the incumbent shall be removed; a second to elect his successor.

³ Idaho actually does not use the recall; hence only eleven states now are active.

of the recall has thus far not been made except in so far as California is involved¹ and consequently it is difficult to make a satisfactory evaluation. In only two cases, involving North Dakota and Oregon, has such a device been used on a state-wide basis; both of these occurred about twenty years ago. However, there have been numerous attempts to apply the recall to local officials—more than two hundred in California alone.² Many of these have turned out to be abortive, but a fairly large number have eventuated in the removal of mayors and other local officeholders, including two mayors of Los Angeles and a mayor of Detroit. In general, it is admitted that the moral effect has been good, although some critics maintain that undue caution has been displayed by executives because of the constant threat of recall. There have been cases in which no clear-cut charges were made against officials and yet in which recall resulted largely because the voters wanted a change. On the other hand, no one can doubt the malfeasance of the mayor of Los Angeles, who in the 1930's set up a racket in the Civil Service Commission under which a scale of regular charges was fixed for purchasing passing marks, advance use of the examination questions, a perusal of the questions for fifteen minutes, and related privileges. There is considerable criticism of the failure of most recall systems to place before the voter the definite question: "Do you or do you not favor the recall of X?" Finally, the experience of the some forty years that the recall has been in effect leads to the conclusion that its use must always be largely confined to officials, such as governors, mayors, and law-enforcing agents, whose functions are broad in character and who are themselves in the public limelight.

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¹ See F. L. Bird and F. M. Ryan, *The Recall of Public Officers*, The Macmillan Company, New York, 1930, for the California study.

² See *ibid.*

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CHAPTER XI

PRESSURE GROUPS AND PRESSURE POLITICS

IT HAS often been the custom in courses in American government either to omit entirely or to dismiss with a few words the role of pressure groups in our political process. In view of the numerous topics which claim a place in such a course, it is perhaps not strange that relatively significant matters must be dealt with summarily. However, there are certain aspects of the American system of government which are so fundamental that they must be examined in detail if anything like an accurate understanding of the whole is to be achieved. There is a good deal of evidence that pressure groups have now attained a degree of influence which makes it imperative to class them with these distinctive features, even if other items which have traditionally enjoyed such eminence must be displaced. Students may have an excellent knowledge of the composition and organization of the legislative and administrative branches, but they will lack a satisfactory understanding of the system as a whole unless they also know how and under what motive power these operate. Inasmuch as pressure groups now control both the legislative process and the administrative agencies to a considerable extent, it becomes essential to give them attention.¹

It is sometimes supposed that pressure groups have suddenly appeared on the American political scene, much as mushrooms do in a field or wood lot, but this does not represent the facts of the case. Influences akin to pressure groups, although they have not carried that label, must have characterized the political process from the very earliest stages of its development. In Indian tribes there is evidence that decisions were sometimes made as the result of pressure exerted by the young braves who thirsted for warfare and scalps, even though the elders, who ordinarily controlled, doubted the wisdom of such action. Even in a simple society there are various groups which hold points of view differing from the

**Pressure
Groups not
a New Fea-
ture**

¹ The best general study of pressure groups, which, however, confines itself largely to the national government, is E. P. Herring, *Group Representation before Congress*, Brookings Institution, Washington, 1929.

opinions of the rank and file. As social and political organizations become more complex, the number and size of these groups tends to increase at a more than arithmetical rate. If these groups lack organization and remain more or less quiescent, they may exert some influence, but they do not attain the status of pressure groups.

When these divisions within a society or a citizenry become so conscious of their desires that they perfect a definite organization, draw up a platform of objectives, and actively seek to bring about the realization of their aspirations, they attain the status of a pressure group. Pressure groups may be observed within business, professional, and religious organizations,¹ but they are particularly identified with government at the present time.

If one accepted the statements of Fuehrer Hitler at full value, he might conclude that pressure groups are found in juxtaposition to government only in the United States. Hitler delights in declamations that describe the absolute unity of purpose which characterizes the citizens of the Third Reich and perhaps takes even greater pleasure in charging that the United States is at the mercy of numerous bands of rapacious scoundrels who regard government agencies only as a means of realizing their selfish ends. No one who is familiar with foreign governments would assign to the United States any monopoly on pressure politics, however, for he knows that every government operates to some extent as a result of such influences. The Weimar Republic in Germany had many of these organized groups, as Adolf Hitler himself, the leader of one of them, readily admits; moreover, despite all of the efforts of Hitler and his Gestapo the Third Reich has also to contend with a modicum of these pressures. For example, in the early summer of 1941, the Catholic clergy, speaking through their bishops, issued a letter in which they set forth their objectives and complaints in so far as the government was concerned. Organized labor has been banned in Germany and integrated with the National Socialist party under the label "Labor Front," but this has not removed it entirely from the scene as a pressure group, as the reluctant modifications in wage scales and regulations as to the buying of government defense securities in the spring of 1941 indicate.

¹ For example, in a Methodist conference it is not uncommon to find well-organized groups of clergy who hold certain theological and social views and who seek to elect their members as officers.

Nevertheless, it is probable that pressure groups in the United States are more numerous, better organized, more vociferous, and more influential in the day-to-day operation of government than in any other country. The very complexities of the socioeconomic structure in the United States account in some measure for this situation. In a highly industrialized country which has drawn its people from almost every race, which encourages freedom of speech and of religion, and which has been more than usually prosperous as far as national income is a measure, pressure groups find a more fertile field than in countries where there is greater uniformity of population and less wealth. Add to that the indifference of large numbers of citizens to public affairs, the "gimme" attitude toward government, and the ability of the public treasury to pay out large amounts in benefits, pensions, and subsidies of one kind and another without too apparent strain, and it is not at all surprising that pressure groups, under a general philosophy of "bigger and better every day," have thrived in the United States.

The relationship between pressure groups and political parties is of more than passing importance. To begin with, the rise of pressure groups has, to some extent at least, been synchronized with the deterioration of party platforms. It is difficult to prove that pressure politics has been the direct consequence of the failure of political parties to take clear-cut stands on public questions; there is some reason to argue that political parties have ceased their former efforts in this field because they have felt that pressure groups were assuming the function. Be that as it may—though it seems likely that these two factors have interacted rather than that one of them has constituted the simple explanation—pressure organizations now do serve in lieu of party platforms to present citizens an opportunity to express themselves on public questions. Some organizations of this character find it expedient to concentrate on a single project, on the principle that bending every ounce of energy toward one goal will produce practical results, while a diffusion of interest will lead to little or no concrete accomplishments. This policy means that citizens may be able to find expression for only one of their interests, at least in so far as they belong to a single pressure group. However, this drawback is probably more apparent than real in the majority of cases, for it is to be noted that single-track minds are commonplace.

**Pressure
Groups and
Political
Parties**

But pressure groups and political parties meet at more than the single point of presenting issues, for most pressure groups have discovered that their efforts are rarely very successful unless they have engaged in political activities. Therefore, pressure groups make contributions to campaign chests, sometimes, as in the case of the C.I.O. in the Democratic campaign of 1936, to the extent of many thousands of dollars. If there is some question as to which party will win, a pressure group may find it advisable to assist both parties financially, on the theory that whatever happens at the polls the organization will find itself in favor with the party in power. Support may be tendered individual candidates; official endorsement of a party slate may be given. It need occasion no surprise that public officials who are the recipients of such favors from pressure groups will be impelled to listen to the representatives of these organizations after election and in many cases to act in their official capacities accordingly.¹

There are several methods of classifying pressure groups. In the first place, they may be divided into categories on the basis of the area or branch of government on which they concentrate. Thus there are pressure groups which focus their attention on the national government; others which operate in the state sphere; and still others which are associated with local government. Furthermore, certain organizations may direct their attention to the legislative branch, while others may be active in connection with administrative departments, quasi-judicial commissions, executive offices, and courts. This breakdown affords some notion of how extensive the efforts of pressure groups may be, but it is not too satisfactory because single organizations may be active in Washington, in several state capitals, and even in cities and counties. It is also quite possible that one pressure group may have a program which will call for both legislative action and administrative control.

A second scheme of classifying pressure groups makes their relationship to the public interest the determining factor. In one category may be placed together all groups, irrespective of whether they concentrate on Washington, the states, or local governments, that seek favors which are in conflict with the public interest. On the other hand, the reform associations which desire to improve economic, social, or political conditions may be classed together, again irrespective of the area or branch of government in which they operate. But this classification

¹ For an elaboration of this relationship, see E. P. Herring, *op. cit.*, pp. 47ff.

lacks validity, too, for there is always some difference of opinion about whether or not the aims of a certain group conflict with the general welfare, at least in more than a very minor fashion. Likewise, it is not always possible to take so-called "reform" groups at their face value because some of them may give lip-service to social and political betterment although they are, in reality, selfishly motivated. Then, too, pressure groups themselves are frequently not consistent in their attitudes: they may have goals which are not in keeping with the public interest, yet they may at the same time support legislation which is generally desirable.

A third classification places the emphasis upon the general nature of the membership and program of pressure groups. Professor Herring uses the following system: ¹ ambassadors of American industry, embattled farmers, organized labor, federal employees' unions, professional societies, associations of organized women, forces of organized reform, nationalists, and internationalists. To this list of 1929 might be added today W.P.A. and the organized recipients of public relief. This plan of breakdown has the advantage of being more definite than the two which have been noted above, although even here it is not always easy to decide whether a pressure group is industrial or professional, reform or internationalist. Moreover, such a classification does not tell one too much about the legitimacy of the goals which the pressure groups prosecute and consequently is disappointing to those who are primarily concerned with the relationship between such groups and the public welfare.

There has been some fondness on the part of those who discuss pressure groups to identify them with evil; ² in other words they are supposed by many to have a uniformly bad effect on the political process in the United States. Such an attitude is at best unsophisticated and at worst contributes to the gloomy picture which large numbers of people seem to hold of American government. An objective examination of the situation will, however, reveal a somewhat confused state of affairs. No responsible person can deny that some of the pressure groups are vicious in their desires, their methods, and their general effect upon government—these organizations would tear down the very political

Effect of
Pressure
Politics
upon
Government

¹ See E. P. Herring, *op. cit.*, table of contents.

² It may be added that this is not the case with Professor Herring and others who have studied pressure groups with great care.

structure itself in order to attain their own selfish ends.¹ Fortunately such groups seem to be the exception rather than the rule. More dangerous are those organizations which, while not entirely unscrupulous, are so wrapped up in their narrow, personal point of view that they unconsciously exert themselves to bring about the weakening of the American system of government. As a rule, the programs of such groups are not bad in themselves and under certain circumstances might be admirable, but their supporters have such single-track minds that they ignore the general public good. Thus organized labor in 1941 probably had no desire to injure the country or to interfere with the national defense program—indeed there is a good deal of evidence which points in the opposite direction. Under different circumstances the desire to raise wages and better conditions of labor would be consonant with the welfare of the country; yet the demands and strikes which were commonplace in 1941 could with difficulty be reconciled with responsible citizenship. How large a proportion of the pressure groups in Washington and the states belong to such a category, it is difficult to ascertain, but it is probable that a considerable majority stand on its fringe if they do not actually go over all the way. That is not to say that this majority of the pressure groups is invariably bad in its influence—it is rather that occasional efforts are negative to the general public interest. However, the very number of these selfish, although not entirely illegitimate, desires seems to some observers to be so enormous that the future of the democratic institutions of the United States is threatened.

In defense of the pressure groups it may be said that government in the United States would have great difficulty in functioning if their activities were dropped. Congress and the state legislatures depend upon the representatives of these groups to furnish a considerable amount of information and guide service as a basis for legislation. Of course, there is the Congressional Library in Washington and state libraries in many of the states where legislators could obtain information relating to public questions; moreover, Congress and many of the states have legislative bureaus which in many cases could presumably furnish more assistance than they are at present called upon to give. But even taking into account these possibilities, pressure groups make a distinctive contribution in many

Contributions of Pressure Groups

¹ The *bund* and at least some of the Communist organizations would seem to fall into such a category.

instances. Some of them pride themselves on high standards and display a considerable degree of responsibility in advising legislators on a pending bill. Then, too, it is probable that there is more incentive on the part of the employees of these organizations to dig out the latest and most pertinent facts than there is for the staff members of libraries and legislative bureaus—the very jobs of the former may depend upon their ability to convince a legislative body that a certain course is or is not desirable. Moreover, public servants sometimes find it helpful to listen to the arguments advanced by two opposing groups. Supplementing such evidence with pointed questions put to the interested parties is, legislators contend, a more feasible method to arrive at a reasonably tenable conclusion than is the mere digesting of reports based on the contents of legislative reference libraries. It must be remembered that public officials are frequently very busy men and that they work under the handicap of time, bureaucracy, and meretricious public sentiment. Under such circumstances the assistance and support which they receive from the more responsible pressure groups may be very helpful.

TECHNIQUES OF PRESSURE GROUPS

There is, of course, a wide variation in the techniques which are used by pressure groups. A single organization may depend upon an imposing array of instruments, even if it directs its attention only upon Congress, a state legislature, or an administrative commission. And, naturally, a pressure group which spreads its efforts over a large territory will necessarily have to employ various methods. The time element enters in here, for the same organization may not rely on the same techniques in two successive years, either because a new fashion has been established, new officials direct the campaign, or an older weapon has proved ineffective. Nevertheless, there are certain methods which are standard year after year and which are to be observed, perhaps with slight modifications, in Washington, in the various state capitals, and even in the local governments. Because of their importance in understanding the entire process and because of the probability that any citizen will sometime find himself in a position in which he will need to use such methods, we will look at some of the more common techniques.

It is probable that over a period of years pressure groups have used no method more widely than personal contact. The stronger organiza-

tions maintain a permanent staff of expert lobbyists who frequent the places where congressmen, state legislators, or administrative officials are to be found. The uninitiated thinks of these lobbyists as "buttonholing" the public officials in the corridors or on the steps as they go to and from their offices or chambers, and sometimes this may actually be done by the more amateur of the agents. However, the handsomely paid and highly skilled public-relations counsel which the wealthier organizations employ rarely condescend to an undignified approach of this kind. It is more likely that they will face the congressman across a luncheon table, converse with him in his office, offer advice in the committee room, or meet him at a club or on a golf course. The more suave of these gentlemen never for a moment descend to the level of suppliants, for they are far better paid, probably more adequately trained, and certainly as proud as the public officials whom they may secretly regard with contempt. Rather they present their case, as a lawyer would argue for a client, furnish typewritten arrays of information, answer questions, and engage in amiable conversation, interspersed perhaps with amusing and not uncommonly off-color stories. The reputation of the most successful of these lobbyists is outstanding—public officials may be flattered by their interest and their suggestions may be accorded the most respectful attention. The less well-to-do pressure groups cannot afford to retain agents who expect as much as \$25,000 or even \$50,000 per year as salary, together with generous expense accounts. But even so, some of these less prosperous groups have representatives who have been so long in the business that they make up in experience what they lack in finesse.¹

In addition to professional lobbyists, pressure groups may send their officials to Washington or a state capital on a special mission. Influential members of the pressure groups are frequently called upon to arrange personal conferences with their local legislators in order to canvass a certain situation. It is a sight repeated many times each day to encounter a state legislator or congressman talking earnestly to some man of affairs from his home district who has descended on Washington

¹ One of the most successful methods of influencing Congressmen is the "card file," which was brought into effective use by the Anti-Saloon League lobbyists during the 'twenties. An extensive biography of each Senator and congressman is kept which emphasizes all points on which he is likely to be vulnerable. When a vote not ordinarily controlled by the group is needed to push through a measure it supports, the lobby has only to go to its file to find a congressman who has in his background something which is likely to make him approachable. If the congressman is inclined to be recalcitrant, the file may even provide information of methods with which it is possible to bring him around.

or the state capital to secure support for a particular course of action.

In those cases in which it is not feasible to accomplish an end by employing the professional lobbyist or special representative to influence public officials, pressure groups often make use of letters, telegrams, and even petitions, although the last have somewhat of a bad reputation with many congressmen. The members of Congress and of state legislatures are ordinarily distinctly sensitive to sentiment in their home districts, for they are always looking forward to the future when they may have to come before the voters. Hence, they are quite attentive to the letters and telegrams that come to them from their constituents, especially if it appears that these are not of the "form-letter" variety. Records are almost always kept of letters and telegrams that relate to pending business and it is the rule rather than the exception for legislators to inform themselves of the trend which home sentiment takes. It is even alleged that some legislators keep communications from constituents in two piles until the time comes for a vote; then they look to see which pile is higher and vote accordingly. When a very controversial measure is nearing a vote, telegrams may pour in by the thousand, so that the telegraph offices are several hours behind with deliveries.

Letters,
Petitions,
and Tele-
grams

The development of the radio has added a very effective technique to the list of those used by pressure groups. Appeals over local stations may not accomplish a great deal beyond the sphere of local government, but broadcasts carried by a national chain may generate tremendous popular excitement which focuses on Congress. Only well-to-do or exceptionally clever organizations can resort to national hookups because of the cost involved; however when that method can be managed, the results may be striking. One of the best examples of radio pressure saw Father Coughlin as the chief actor and the bill providing for the reorganization of the administrative departments as the victim.¹ Virtually every commentator and newspaper writer predicted the passage of the bill by a safe margin, while informal polls of congressional opinion pointed in the same direction. But on the Sunday before the vote was to be taken, Father Coughlin delivered a stirring "radiation." The reorganization bill, he said, would result

Radio
Broadcasts

¹ This was in 1938. Father Coughlin, a Catholic priest with a parish at Royal Oak, Michigan, received widespread attention during the 1930's because of his weekly broadcasts over a national hookup. Though unpopular with numerous Catholics, both clergy and laymen, Father Coughlin managed to maintain his broadcasts for several years, appealing particularly to those who feared social injustice and government regimentation.

in almost every conceivable iniquity. It would substitute dictatorship for democracy. All patriotic citizens must immediately rally to the defense of their country. They must flood Washington with telegrams denouncing the measure: On Monday almost one hundred thousand telegrams poured in and the bill was killed.

Many pressure groups maintain departments whose sole function it is to generate indirect support for their programs by the publication of printed material. Interesting articles may be written for the use of weekly, small-town newspapers which often require "filler"; these will be sent out by the thousand in "boiler plate" to local editors and many will find their way into the papers.¹ Occasionally a pressure group will be able to purchase a metropolitan newspaper, either outright or sufficiently to control its attitude on a certain matter. It is difficult to measure the influence of these methods, but it is believed that they are very effective in certain cases. The stories furnished rural and small-town papers are usually written in such a manner that it is not clearly apparent from what source they emanated; thus they lose the stigma of propaganda and are then doubly weighty in effect. The majority of pressure groups which are more than ephemeral publish bulletins, pamphlets, books, and other related printed material which may have a wide circulation or be limited to members. Some of these are so poorly prepared that they must be wasted as far as effect is concerned, but others are very ably written, profusely illustrated, and attractively printed.² They may not have a very immediate influence; indeed they are not aimed at any specific project as a rule. One pressure group went so far several years ago as to circulate on a complimentary basis 63,000 copies of a book retailing at \$3.00, hoping that a handsome indirect profit would ensue.³ Another organization, with large resources at its command, undertook to have textbooks written for use in university and public-school courses that would lead to favorable public support for the privately owned electric utilities.⁴

¹ The National Electric Light Association may be cited as an example of a pressure group which did this on a large scale and with amazing results. See Federal Trade Commission, *Report to Senate, Senate Document 92*, Seventieth Congress, Government Printing Office, Washington, pts. 1-11.

² *The Steel Age* may be cited as an example of excellent public-relations effort which indirectly creates a favorable sentiment for the steel industry.

³ See *Congressional Record*, Sixty-sixth Congress, third session, p. 135.

⁴ The National Electric Light Association did this on a considerable scale, employing a dean at Ohio State and a professor at Harvard to supervise.

**News-
papers,
Pamphlets,
and Other
Publica-
tions**

Then there are the practices which, although illegal, nevertheless continue to be used. The support of a public official may be purchased outright, perhaps by the payment of a lump sum of money, **Buying of Support** again by the proffer of corporation shares, or possibly on the basis of future business or professional concessions of a valuable nature. In the old days it was a common practice for unscrupulous interests to buy the votes of legislators, much as they would purchase materials or employ workers, paying anywhere from a few dollars to tens of thousands of dollars. Laws in both the nation and states now make such action a felony, while public opinion regards transactions of this type with less favor than ever before. Nevertheless, it would be a mistake to assume that vote buying has disappeared from the scene. In the case of members of Congress the outright sale of favor is certainly not commonplace, although there is reason to believe that more refined methods may be employed more or less frequently. In other words, passing "swag" in the form of gold or greenbacks is risky and lacking in finesse, whereas retaining a congressman or his relatives as legal or public-relations counsel at a fancy figure, either immediately or after his term has expired, is a horse of a different color. Standards in state legislatures are in general inferior to those in Congress and consequently there is more open graft at the state capitals than at Washington. Estimates vary as to how extensive the purchasing of votes really is.

Intimidation and the use of physical force also reveal themselves in state capitals as they do not in Washington. The chairman of one of the most important committees of the Indiana General Assembly testified that he no longer had possession of one of his committee's bills because, after threatening him with **Intimidation and the Use of Physical Force** bodily violence if he did not "loan" the bill to an agent of a powerful pressure group, the lobbyist refused to return it.¹ At this same session a pressure group came in for notoriety because one of its members openly attacked an administrative official in a corridor of the Statehouse, using brass knuckles and gouging out one of the eyes of the latter. About ten years earlier the Klan boss, Grand Dragon Stephenson, openly boasted of parading through the aisles of the legislative chambers of Indiana with a revolver strapped to his side while giving his instructions. "D—n them," he said, "we elected them. Now let them follow our orders."² It might be supposed that these

¹ This occurred during the session of 1937.

² Such testimony was given under oath before a court.

crude tactics had long since passed into oblivion, but apparently there is more use of brute force than might be expected. Much more commonplace, however, is the verbal brand of intimidation which threatens defeat at the next election, unless assistance is forthcoming. The law designates even verbal threats as illegal, but it is exceedingly difficult to cope with so tenuous a problem. "Plug-uglies employed by pressure groups may use foul language and speak with brutal frankness when uttering their threats; more sophisticated lobbyists will couch them in such subtle words that it would not be at all easy to prove in court that any attempt at intimidation was made.

In addition to the techniques already listed, several others are often encountered which do not submit to an easy classification. The movies **Miscellaneous** have been an important instrument for many years, although the commercial films find that subtlety is demanded, unless box-office receipts are to suffer. In addition, large numbers of so-called "educational" films, prepared by various pressure groups to deal more directly with a field, are made available to schools, clubs, and other groups. Exhibits of one kind and another may be arranged and circulated about the country through the medium of trucks, conventions, and institutes. Lecturers may be furnished free of charge or at a nominal cost to address clubs, schools, and other assemblages on subjects of general interest, yet which present the opportunity to create favorable public attitudes toward the pressure group's policies.¹ Playlets and pageants are written for the use of schools and Sunday schools by reform groups to build up sentiment against the use of liquor, tobacco, and harmful drugs. Posters may be provided; billboards rented; display advertisements in newspapers purchased; and cuts and photographs furnished. Entertainments may be put on for public officials, during which food, liquor, and other divertissements may be offered in abundance. In one state capital a railroad company kept a dining car in the railroad yards during an entire legislative session and invited all of the members of the legislature to be its guests at their convenience.

NATIONAL PRESSURE GROUPS

At this point it may be profitable to look at some of the pressure groups which are active in influencing the operations of the national government. Professor Herring found the Washington addresses of

¹ The Pennsylvania Railroad may be cited as an example.

530 of these groups in 1928 and the number has increased since that time.¹ The head of a press bureau several years ago placed the number of representatives maintained by pressure groups in Washington at more than a thousand and added that if secretaries, publicity aides, statisticians, and other members of office forces be included something like five thousand persons would be involved.² It is, of course, impossible to deal in any detailed fashion with even the most outstanding of these groups, but a few examples may serve to throw additional light on the subject.

The number of agricultural pressure groups is not especially large, but their influence is almost always impressive and frequently exceeds that of any other organization. Indeed Professor A. N. Holcombe has concluded that over a period of years the **Agricultural Groups** farm lobby has enjoyed greater success than any other interest group.³ Two agricultural organizations have nation-wide membership and bring to focus on Washington the desires of the farmers in general: the American Farm Bureau Federation and the National Grange of the Patrons of Husbandry.

The Grange can look back to the nineteenth century, but it has been particularly active in Washington during the last thirty years. It is based on some eight thousand local granges and has a total **The Grange** membership of about one million farmers. The Washington office serves as a clearinghouse for the state and local granges and cannot act until a program has been adopted by the national convention. While, as a rule, it has not been too aggressive in policy or tactics, preferring to lay before Congress and the Department of Agriculture the information which it has gathered, still its very size and the extent of its membership commands a respectful hearing for its sentiments.

The American Farm Bureau Federation is a younger pressure group, but it has been more energetic in urging its program on Congress. The Farm Bureau is organized into local, county, and state **The Farm Bureau** units, with more than fifteen thousand local bureaus and well over half a million farm families as members. Starting out under the leadership of county agents and state colleges of agriculture, the Farm Bureau has always attracted the more progressive farmers and consequently has enjoyed intimate relations with the federal Department of Agriculture. An elaborate program aimed at putting the farmer

¹ *Op. cit.*, p. 19.

² F. J. Haskin in the *Washington Star*, May 30, 1926.

³ In an address delivered at Northwestern University in 1939.

on an equal plane with business and labor has been drafted and vigorously prosecuted. Much of the agricultural legislation passed by Congress during the 1930's was traceable in large measure to the effective efforts of the Farm Bureau.

In addition to the two organizations which represent farmers in general, there are several reasonably powerful groups which include in their membership only certain classes of farmers. The **Miscellaneous Agricultural Groups** National Live Stock Producers' Association, as its name implies, rules out certain classes of rural dwellers; but, nevertheless, it covers a large portion of the farm population, with its more than quarter of a million members. The influence of this pressure group is strikingly evident in connection with the sanitary embargo on Argentine beef. Since the allegation that all Argentine beef is diseased has no adequate basis in fact, since the Argentinians look upon the embargo as highly insulting, and since, therefore, the barrier is in conflict with the "good-neighbor" policy, President Roosevelt, Secretary Hull, and many other persons in the government appreciate the necessity of carrying out the commitment to remove the embargo which we made several years ago. However, the National Live Stock Producers have been so aggressive in their opposition that after several years have elapsed the embargo remains. Even during the national emergency, when additional supplies of beef, especially corned beef, were needed for the army, the National Live Stock Producers were able to bring enough pressure on Congress to hold up the purchase of foreign meat.¹ The American Dairy Federation, the National Milk Producers' Association, the Apple Growers' Association, the Burley Tobacco Growers' Cooperative Association, the Dark Tobacco Growers' Cooperative Association, and the American Sugar Cane League are among other agricultural pressure groups that deserve attention.

Professor Herring writes: "Of the many organized groups maintaining offices in the capital, there are no interests more fully, more comprehensively, and more efficiently represented than those of American industry."² Since these words were written the situation has changed somewhat because of the suspicious attitude the New Deal has had toward busi-

Industrial and Business Pressure Groups

¹ This was in 1941. The War Department requested such permission, but the Live Stock Producers were able to hold the matter up and finally arrange a compromise under which no foreign beef was to be purchased so long as American supplies and prices were satisfactory.

² *Op. cit.*, p. 78.

ness. But even so, one cannot doubt the far-reaching influence of business lobbies. The President may castigate the "economic royalists" in his public statements; Congress may turn a cold shoulder when it follows the executive leadership in passing certain regulatory legislation; but despite all of these denunciations and defeats the industrial groups have a great deal to say about how the government is run. If business loses the first battle in Congress, it invariably girds itself for a second battle with the administrative agency charged with carrying out the provisions of the law. It may not win a victory even in the second battle; yet the terms imposed upon the vanquished ordinarily permit it some concessions.

Business is represented in Washington both generally and through trade associations. The Chamber of Commerce of the United States has the task of watching the whole gamut of government agencies in Washington in the interests of all varieties of business and industry. Based on more than fifteen hundred local chambers of commerce and national business associations, the Chamber of Commerce of the United States feels that it has a mandate from approximately one million business units which make their desires known through a national council. The Washington office occupies a large number of rooms in a prominently located and handsome building. An elaborate internal organization provides nine major subdivisions which have to do with manufacture, finance, civic development, foreign commerce, domestic distribution, insurance, national resources production, transportation and communication, and agriculture, as well as three general departments which handle field work, research, and editorial and promotion activities. As a rule, the Chamber of Commerce of the United States does not concentrate its attention on current legislation, despite the great interest that may be attached to such matters; instead it seeks to build up a favorable attitude toward business on the part of Congress, the general public, and the administrative departments.

The trade associations ordinarily limit themselves to a single type of business enterprise and are more active in relation to current legislation and administrative orders. Nevertheless, there is some variation in scope—for example, the National Association of Manufacturers is far more extensive than the National Fertilizer Association. Indeed, the National Association of Manufacturers covers such a wide field and has at its command such

Chamber of
Commerce
of the
United
States

Trade
Associa-
tions

resources that it is sometimes classed with the Chamber of Commerce of the United States rather than with the trade associations. It differs from the latter in that it is more militant in attitude, more aggressive in tactics, and more concerned with current happenings. Another organization somewhat similar in method and power is the Railroad Owners' Association. Among the more strictly trade associations may be mentioned the National Coal Association, the American Petroleum Institute, the American Iron and Steel Institute, the American Bottlers of Carbonated Beverages, the American Cotton Manufacturers' Association, American Wholesale Grocers' Association, Hardwood Lumbermen's Association, Portland Cement Association, and the National Varnish Manufacturers' Association. The mere listing of the names of the trade associations would require several printed pages.¹

Organized labor has been a very active pressure group for many years, but it has come into its present prominence only since 1933. **Organized Labor** There are the two giant associations, the American Federation of Labor and the Congress of Industrial Organizations, which bring together the tremendous strength and resources of organized labor.² The rivalry, and even antipathy, which characterize the relations of the "big two" militate to some extent against their effectiveness as pressure groups and cause repeated attempts to bring them together again into a single fighting force. Yet after due allowance has been made for the weakening effect of the split, the weight of the influence exerted by the two associations is very great. Congress, the President, the Department of Labor, the National Labor Relations Board, together with numerous other agencies of government, are very sensitive to labor sentiment and treat labor itself with distinct respect.³

Flanking the A.F.L. and the C.I.O. in their Washington efforts are a number of more specialized labor unions. The railway brotherhoods, sometimes called the "Big Four," have able Washington staffs which can draw on the ample financial resources which have been amassed

¹ For additional discussion of business pressure groups, see V. O. Key, Jr., *Politics, Parties, and Pressure Groups*, The Thomas Y. Crowell Company, New York, 1942, Chap. 5.

² A.F.L. reported 4,569,056 dues-paying members on August 31, 1941, while C.I.O. claimed approximately 5,000,000 members in 1941.

³ Despite repeated defeats in the Far East and insistent demands for more military supplies, organized labor was so powerful that proposals to suspend the forty-hour week were defeated in February, 1942.

by these organizations.¹ When it comes to railroad legislation, these brotherhoods frequently speak with decisive authority. The Amalgamated Clothing Workers of America, the United Mine Workers, the Amalgamated Association of Street and Electric Railway Employees, and the several unions of government employees may or may not be affiliated with the A.F.L. or the C.I.O., but they each bear weight as pressure groups in their own name.

During the second and third decades of this century the most striking pressure in Washington was probably wielded by the Anti-Saloon League and affiliated temperance organizations. Even in this day when pressure groups are more numerous and vociferous than ever before, it is not easy to duplicate the record of the Anti-Saloon League, which employed a most inconsistent yet effective combination of whipcracking techniques and oral persuasion to get what it wanted out of Congress.² At present, however, the role of reform organizations is not to be compared to that of organized labor, the farmers, or business. Several associations have been reasonably active in promoting the extension of the merit system in federal employment; others are primarily interested in the tax system. A National Child Labor Committee carries on a modest program, while various groups interested in health seek greater federal activity in venereal-disease control, more adequate hospitals, and recreation. Conservation organizations press for more attention to timber, oil, and other natural resources. Perhaps the best known reform agency at present is the National League of Women Voters, which displays wide interest in civil service, administrative organization, government research and planning, and international relations.

Many of the professional associations take an active interest in certain phases of the government and let it be known what their judgment is on controversial measures. A few of these have substantial treasuries and maintain reasonably elaborate staffs in Washington, but the great majority do little more than send delegations, pass resolutions, and perhaps maintain a reporting service. If the American Bankers' Association be in-

¹ These include the Brotherhoods of Locomotive Engineers, Firemen, Conductors, and Brakemen. Members of railway labor unions numbered approximately nine hundred thousand in 1941.

² For a vivid account of the pressure activities of the Anti-Saloon League, see Peter Odegard, *Pressure Politics*, Columbia University Press, New York, 1928.

cluded among the professional rather than the trade associations, it constitutes an exception to the rule, for its branch office in Washington is adequately housed and staffed and its activities rather varied. The American Bar Association is one of the leading professional associations, but its Washington efforts are comparatively minor. The American Medical Association has recently attempted to limit and forestall any large scale expansion of the public health program of the Federal government, particularly in so far as it might encourage socialized medicine. The National Education Association has not been outstanding in the past, but there is some reason to believe that it may expand its pressure program in order to urge on the national government an ambitious program which would bring up educational standards in certain backward states. Academic groups, such as the American Political Science Association, the American Society of International Law, and the American Economics Association, occasionally pass resolutions relating to government publications or some other nonpolitical matter and appoint delegates to wait on the proper authorities, but they have no formal representation in Washington. The American Association of Social Workers maintains an interest in the public welfare program of the national government.

With well over a million civil employees¹ on the pay roll of the national government, it might seem that government employees would constitute one of the most powerful of pressure groups. If there were a single gigantic organization which could speak for all of these persons and promote their interests, it might well be that enormous pressure would be exerted. If each of these employees accounts for five votes, as is sometimes asserted, more than seven million votes could be mustered by this group. Needless to say, very few politicians would desire to risk the displeasure of so large an element. Actually the federal employees are divided into a number of associations which may or may not work together toward a common end. If the pension system is up for consideration, if a revised salary scale is being considered, considerable cooperation may be expected. However, the mere fact that some of the workers are under A.F.L., others affiliated with C.I.O., and still others in independent organizations, prevents anything like the cohesive pressure that is manifest by the agriculturalists, industrialists, and laborers.

¹ The number of federal employees exceeded 1,500,000 in 1942.

It is probable that at times the veterans have constituted the most powerful single pressure group in Washington. Professional staff members have been supplemented by large numbers of ^{Veterans} veterans from various parts of the country, until a well-nigh invincible battering ram has been placed in action. When the local posts of the American Legion¹ and the Veterans of Foreign Wars bombarded them with letters and telegrams, Senators and Representatives were very reluctant during the fifteen years following World War I to refuse any request for veteran benefit. Presidents Coolidge, Hoover, and Roosevelt all courageously opposed certain demands made by the veterans and even vetoed veteran-backed bills, but the force directed against Congress was so great that the veterans carried the day. During the late 1930's the veterans' organizations deteriorated somewhat; a difference of opinion was displayed; and world events served to eclipse veteran claims. However, there is little doubt that determined efforts will be made to regain influence after the national emergency passes.²

STATE AND LOCAL PRESSURE GROUPS

The picture presented by forty-eight state capitals and several thousand cities and counties is even more complicated than that centered on Washington. Some of the same groups evident in Washington are to be observed in the state governments, although they may be working for quite different ends and employ entirely different methods. On the other hand, there are some pressure organizations which, having no consuming interest in Washington, devote themselves wholeheartedly to state and local governments. The number of pressure groups varies from state capital to state capital, depending upon the degree of industrialization and populousness of the state, the particular time, and other factors.³ Arizona, for example, could scarcely be expected to produce the horde of lobbyists which are a feature of government in Illinois because certain interests that are well established in the latter state may exist very modestly if at all in sparsely

¹ In 1941 the American Legion reported 608,579 members.

² A general pension bill for the veterans of World War I has been introduced in Congress during 1941. It may be expected that this will be pushed to the limit when and if normalcy returns.

³ For illuminating studies of pressure groups on the state level, see Belle Zeller, *Pressure Politics in New York*, Prentice-Hall, Inc., New York, 1937; and D. M. McKean, *Pressure Groups in New Jersey*, Columbia University Press, New York, 1938.

settled and unindustrialized Arizona. Even in the same state there may be a striking difference from year to year—if the popular mood seems to be ripe for many changes and large numbers of legislative proposals are being considered, it is obvious that there will be greater pressure activity than during a period when the popular watchword is governmental quiescence. Some notion of the situation in a fairly typical state may be obtained from the 1941 session of the Indiana General Assembly. In that particular state pressure groups maintaining paid lobbyists¹ in the legislature are required to register with the secretary of state, to list their agents, and to describe very briefly and in general what they seek. In 1941 the number of registered pressure groups was approximately 150, while the number of lobbyists reached about 450—the equivalent of three lobbyists for each member of the legislature. In contrast to this record which marked an all-time high for the state, a special session limited to social welfare a few years earlier had seen only some twenty-five pressure groups registered and less than one hundred lobbyists. It may be noted that these numbers do not include the numerous organizations that carry on small-scale activities, depending upon their officers or members to volunteer a few hours or two or three days for service.

The same farm pressure groups that exert influence on the national government are active in the state capitals, although their programs are of course pitched on a different level. In many states the farmers enjoy even greater dominance than in Washington, while in highly industrialized states they may be less powerful than organized labor or trade associations. While in Washington the farm lobby is primarily concerned with legislation aimed at improving farm prices, the program in a state will usually be far broader in character. Keeping the tax rate down almost always receives instant attention, while anything that would hike the general property tax rate is almost automatically opposed. Good roads, generous state subsidies to local governments, and an adequate share of state jobs and patronage also frequently command support.

Both the state and local chambers of commerce in large cities may be well represented when a state legislature is in session. In addition, there will invariably be associations of retailers, liquor dealers, and

¹ The attorney general has ruled that organizations using regular officials for lobbying do not come under this rule; only where a special payment is made for lobbying is registration required.

wholesalers with favors to ask or axes to grind. Almost always the chief goal of these business groups is to keep public expenditures within reasonable limits and consequently prevent increases in the tax rate. By combining with the farmers it is ordinarily possible to achieve these ends, unless there is disagreement about what expenditures shall be cut and how the taxes shall be levied. Business groups probably pay more attention to defeating proposed legislation than to sponsoring bills of their own, but they by no means confine themselves to a negative attitude. The bankers, the lawyers, the doctors, and the teachers are all quite active in state government, not only in connection with legislative sessions but also in administrative agencies. Relations between bankers' associations and state banking departments are usually intimate; doctors want the department of public health run according to their ideas; while teachers expect to have a good deal to say about the state department of education. Schoolbook companies turn heaven and earth to get contracts in those states in which uniform text adoptions are made by a state board.

**Business
and Profes-
sional Asso-
ciations**

An example of a pressure group which is usually more active in a state capital than in Washington is that of the public utilities. Electric, gas, telephone, and transportation utilities are all represented at state legislative sessions with an imposing array of lobbyists. They usually want certain bills enacted, but they are especially desirous of killing bills which would increase their taxes, add to their pay rolls, reduce their profits, or otherwise be to their disadvantage. In the old days railroads had such a powerful grip on some states that political machines were known by their names—for example the Southern Pacific machine in California—but their influence is far less at present. On the other hand, electric utilities are perhaps more powerful than before and at times find it possible to control state action. While the public utilities are watchful when the legislature convenes, their chief concern is the administrative agency which has been set up to fix their rates, regulate their financial practices, and otherwise supervise their operations. And in this endeavor they very frequently enjoy the most striking success. It is alleged in most states that the utilities "own" the public-service commission lock, stock, and barrel, but this is difficult to prove. They do seem to persuade the commission more frequently than does the counsel for the public. But considering the care with which they select their

**Public
Utilities**

lawyers and the large fees which they pay in comparison with the modest fees afforded by consumer groups, perhaps this is to be expected.

State employees are less permanent than federal employees because of the spoils system under which they hold their jobs in most states.

Public Officials and Employees This lack of tenure might seem to remove them as a pressure group, but they are much more active in politics than their federal colleagues and this serves to counteract their apparent disadvantage. Ordinarily state employees are not

very effectively organized and hence cannot bring concerted pressure to bear. Public officials, particularly local officials, are a different proposition entirely. In many states local officials on the county, city, and township level have wonderfully constructed machines for opposing state action. They will pay out large sums of money and resort, to almost any tactics in order to maintain the lucrative fee system, prevent their patronage from being reduced, and safeguard their own authority. Especially when proposals looking to local government reform or consolidation are up for consideration, these local officials constitute a stone wall against which all efforts beat helplessly.

Organized labor is now represented at all sessions of state legislatures; and, if there is a department of labor, this pressure group ordinarily has a good deal to say about its operation. However, **Organized Labor** there is much variation in the exact role of organized labor from state to state. In some of the sparsely populated states there is comparatively little opportunity to build up sizable unions, for there are no large bodies of workers. In these states labor may not essay elaborate programs, since they would receive little consideration from the farmers and business men who constitute the legislature. Even where the population may be large, the role of labor is not likely to be outstanding if agriculture is the prevailing activity. But in the highly industrialized states of the East and Midwest organized labor has made determined efforts during recent years to write on the statute books large numbers of laws in regard to working conditions and treatment. Although the chambers of commerce and trade associations have often fought these proposed statutes and sometimes have succeeded in killing them, labor's general record of accomplishment is distinctly good, even in states inclined to be conservative.¹

¹ In the single year 1937 organized labor sponsored approximately twenty bills in the Indiana General Assembly. Despite the opposition of business fifteen of these were passed and became law.

CONTROL OF PRESSURE GROUPS

As pressure groups have grown in size and influence and as they have assumed sometimes direct control of the process of government, there has been considerable apprehension and opposition by those who interpreted them as wholly corrupt and evil. Others, aware of their importance and convinced of their utility, have advocated open acknowledgment of their work. Nearly all have admitted, however, that the organizations have led to excesses and have wanted to reduce that possibility.

Most of the attempts to regulate the activities of pressure groups have centered about one phase of their work, that is, the lobby. Historically, this was the first phase to become nationally important and it has since remained one of the most spectacular of their endeavors. Ever since the 1870's and 1880's, when the vote buying by many railroad corporations was revealed, the word "lobby" has had an evil connotation. Even today, although the standards of the lobby have improved somewhat and although it fulfills a more legitimate function as an information and group representation service, that connotation persists. Congressmen frequently repudiate vehemently any association with lobbies and many of them are very annoyed by the activities of what Senator Caraway called the "third house."¹ Unquestionably there is considerable justification for this attitude, particularly on the part of state legislators, because many of the lobbies continue to use what are merely subtle and skillful refinements of the tactics common in the 'seventies and 'eighties. In consequence many bills have been introduced in Congress which propose to regulate lobbies. The majority of them have defined lobbyists as those who receive pay for attempting to influence legislation and have called for registration, together with a statement of purposes in view, of income, and of expenses.

In 1913 and in 1928 bills introduced by Senators Kenyon and Caraway respectively were in a fair way of becoming law. But, in spite of the fact that some reputable lobbyists supported them in the hope that their dishonest competitors would be weeded out, the farm and labor groups opposed and in a large measure killed the bills because they seemed to be one step toward complete outlawry of pressure

¹ See for congressional attitude, Herring, *op. cit.*, Chap. 14 and T. H. Caraway, "Third House," *Saturday Evening Post*, Vol. CCI, p. 21, July 7, 1928.

groups' legislative activity. Likewise, some congressmen opposed the bills because they were so written as to apply to good as well as bad lobbies. In 1935, however, the proponents of lobby control succeeded in obtaining partial satisfaction. Largely because of the widespread publicity given to power propaganda and power lobbies during the Federal Trade Commission investigation of utilities in 1928, it was possible to insert into the Holding Company Act a provision to the effect that all public-utility lobbyists be required to register and that no utility be permitted to contribute to a party campaign fund. Similarly, in 1938 foreign propaganda agents in the United States were required to register with the State Department, and agents for shipping concerns were required to register with the Maritime Commission.

It is perhaps too early to pass judgment on the working of these laws. But if the experience of the states is any indication, it is to be doubted that registration will prove very effective. Some
Limitations of Lobby Regulation thirty-two states have enacted laws which involve substantially the same sort of registration provisions as do the federal regulations. Of these Indiana and New York are said to be among the best; yet considering the illustrations given earlier in the chapter it would be hard to deny that lobbies in those states are not fully so strong and frequently so disreputable as in states which attempt no regulation. Mere registration of lobbies and lobbyists cannot be expected to accomplish much effective regulation. It is based on the premise that bringing the activities of pressure groups and their lobby subdivisions into the light of day will automatically discourage their efforts. Some groups, such as the Anti-Saloon League, the Grange, and labor organizations, have had considerable publicity and have not been the least inhibited by it. Many of the supporters of registration regulations expected also that the evils and excesses of pressure groups as a whole would disappear with the regulation of this phase of their activity. Since the maintenance of the lobby is only a portion of the work of these organizations, since they are increasingly active in other fields—the control of public opinion and of administrative agencies—it is unrealistic to expect that their importance would be diminished by restraints on this one portion. When pressure groups are carried by their single-mindedness to the point of distributing propaganda instead of information and half-truths in the guise of facts in order to control public opinion and indirectly to influence legislation, laws restricting a rather unconnected phase of their work,

the lobby, cannot be expected to operate effectively on their publicity activities also. Far more successful in keeping pressure groups within bounds are such methods as the revelation of the public-utility propaganda in the investigation by the Federal Trade Commission in 1928. Nor can laws aimed at the lobby be of any particular use when pressure groups "buy" the members of a regulatory commission, as they are sometimes alleged to do. Although registration laws may perhaps be helpful in restraining some of the unashamed lobbies and lobbyists, they do not touch many of the other excesses of pressure groups which, if the interests of the people as a whole are to be protected, are just as badly in need of regulation.

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CHAPTER XII

THE ROLE OF PUBLIC OPINION

THERE has been a lively interest in public opinion as an object of speculation and discussion for many years. Students of law, including Austin, Esmein, Willoughby, and Dicey, have explored the legal and institutional ramifications of public opinion; Tarde, Wallas, and Lippman have been interested in the sociological and psychological backgrounds; Lord Bryce and President Lowell have dealt with public opinion from the standpoint of political science. During recent years practitioners in applied public opinion, such as Edward Bernays and George Gallup, have contributed illuminating discussions of the practical application of the principles. While a careful study of the various schools of thought offers more than ordinary returns, an introductory book dealing with American government can do little more than touch the high points of the theory and must content itself with a summary of the techniques and results.

Some two decades ago James Bryce defined public opinion as "any view, or set of views, when held by an apparent majority of citizens."¹ Many students of the subject have agreed with Mr. Bryce in stressing the latter part of the above definition, being of the definite opinion that a substantial majority of the people must hold a certain point of view or attitude before public opinion can be said to exist. Other authorities in the field find themselves in disagreement with the emphasis upon majority acceptance; Professor Harwood L. Childs, one of the most recent writers on this subject, maintains that "public opinion is any collection of individual opinions, regardless of the degree of agreement or uniformity," adding that "the degree of uniformity is a matter to be investigated, not something to be arbitrarily set up as a condition for the existence of public opinion."² During an earlier period, when political and economic issues were perhaps less complicated and in general therefore somewhat clearer, it was more feasible for a majority of the people

What Is
Public
Opinion?

¹ James Bryce, *Modern Democracies*, 2 vols., The Macmillan Company, New York, 1927, Vol. I, p. 154.

² Harwood L. Childs, *An Introduction to Public Opinion*, John Wiley & Sons, Inc., New York, 1940, p. 48.

to take a common position on an important matter, though even at that time it is probable that on most questions there was no majority opinion. As political parties have fallen into the habit of straddling the fence on almost every issue and human problems have become so intricate that even the experts cannot pretend to keep abreast of every development, majority opinion has become rarer.

From the standpoint of the research scholar all of the hundreds of "collections of individual opinions" which exist at any time are grist for the mill, for it is only by examining and analyzing them all that an adequate understanding of the state of the public mind can be arrived at. Thus the point of view of the farmer, the laborer, the merchant, the professional man, the unemployed person, the radical agitator, the public servant, the housewife, the student, the inhabitant of the underworld, and many others must be taken into account. Furthermore, each of these groups is likely to be subdivided into numerous smaller aggregations of humans and these must be studied before the public opinion of the whole group can be understood. Take the farmer for example; he is composed of cotton planters, livestock growers, sugar-beet raisers, orchardists, gardeners, tobacco growers, wheat ranchers, tenant farmers, and numerous other component parts, each with a more or less distinct set of opinions in regard to the world and its problems. Too little attention has doubtless been given to all of the ramifications of public opinion of this character and hence we are not familiar with all the details that are significant. It is sometimes stated that the social sciences lag behind the physical sciences and as far as careful examination and analysis of all the myriad of details of human life and beliefs goes that seems to be the case. If our political, social, and economic institutions are to keep pace with the discoveries of chemistry, applied engineering, physics, and other physical sciences it will be necessary to pay more attention to such matters as the thousands of collective opinions that finally go to make up general public opinion in the United States.

While the expert needs to know a great deal about the attitudes and beliefs of the multitude of large and small subdivisions of society, the student of government is particularly concerned with the organized public opinions of reasonably large groups. These groups do not necessarily have to include a majority of the people or indeed even a substantial majority of the voters, for

**Importance
of Any Col-
lective
Opinion**

**Organized
Public
Opinion**

the experience of the last few years has indicated that comparatively small groups which are militantly supporting a certain point of view may have great political influence. A few thousand Negroes were able, by threatening to march on Washington, to persuade President Roosevelt in 1941 to issue an order requiring Negroes to be given equal status with whites in the federal civil service. The success of the veterans in getting bonuses and pension legislation is another striking example of the effectiveness of well-organized public opinion on the part of a comparatively small minority of the entire population. The emphatic belief of the recipients of work and direct relief that the government owes them a living has probably not had so much to do with recent political decisions as many assert; it is certainly an exaggeration to say that the presidential elections of 1936 and 1940 were determined by this group, but, nevertheless, it cannot be denied that they are an important factor in American politics. The efforts of the Committee to Defend America, America First, and other organized groups of similar nature have been significant in determining our foreign policy. The groups of individuals who hold inchoate and passive beliefs are important from a sociological and psychological standpoint and cannot be ignored by political scientists, but these groups are not sufficiently united and expressive to make their influence of direct effect on political action. On the other hand, the groups that hold definite opinions and believe so strongly in them that they are willing to take concerted action to influence the government are of the greatest interest to those who want to know what is behind the formal processes of government.

Public opinion is sometimes associated exclusively with the democratic form of government, but in actuality it is not peculiar to any system. One cannot read Hitler's *Mein Kampf* without realizing how important a role he assigns to this factor; he ascribes the defeat in 1918 very largely to an unfavorable public opinion among the German people built up by the Jews and bases his own hopes on a more positive attitude which he believes can be brought about, irrespective of the truth, by divers sorts of propaganda and repressive techniques.

Role of
Public
Opinion in
a Democracy
and
Dictatorship
Compared

The elaborate party conferences of the National Socialists at Nuremberg as well as the somewhat similar Fascist gatherings arranged by Mussolini in Italy are intended to build, control, and bolster pub-

lic opinion as well as to stir up the enthusiasm of the party workers. Perhaps the chief bright spot in the totalitarian picture is this dependence in the last analysis upon public opinion, since it indicates that, when a dictator loses the support of the people, no amount of force, bluster, or showmanship will prevent the system from crumbling. Nevertheless, it is true that it is comparatively difficult for public opinion to have free expression in a totalitarian government, since concentration camps are ready to discipline nonconformists, propaganda machines grind out tons of lies that becloud the issue, and freedom of speech, the press, religion, assemblage, and elections are carefully suppressed as far as possible.

In the Democratic Countries
In the Democracies

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In the democratic form of government public opinion is given more or less free rein and hence it is constantly playing a basic role in public affairs. Elections are held regularly; meetings of one kind and another for the discussion of problems relating to government are scheduled by the thousand; the press is comparatively untrammelled; and the avenues of approach to the executive and legislative officials are well marked. Except in very rare instances, even the most unconventional groups find it possible to utter their views and seek to have them put into effect by the government without danger of prison sentences. Coercive measures are sometimes taken by economic, patriotic, and social groups to limit the free expression of public opinion, but in general the United States has been fortunate in this respect. Unless public opinion is alert and vigorously expressed, democratic institutions fall prey to all sort of maladies: inefficiency, corruption, bossism, and bureaucracy.

EXPRESSION OF PUBLIC OPINION

There are numerous channels through which public opinion is expressed in the United States; a detailed examination of these would require an entire book.¹ Students of American government are, of course, particularly concerned with public opinion in so far as it seeks to control political action, though they cannot be entirely oblivious to public opinion that determines social action, since the fundamental strength of the government may depend in the last analysis upon the home, the church, the business structure, the cultural traditions, and

¹ For examples of such books, see Edward L. Bernays, *Propaganda*, Liveright Publishing Corporation, New York, 1928; W. Brooke Graves, *Readings in Public Opinion*, D. Appleton-Century Company, Inc., New York, 1928; and Milton Wright, *Public Relations for Business*, McGraw-Hill Book Company, Inc., New York, 1930.

the intellectual life of a people. At this point it is advisable to examine some of the means by which public opinion is translated into governmental policy and action.

Perhaps the most important, certainly the most obvious, device through which public opinion controls public affairs is the ballot. When general and special elections take place, as they do both regularly and frequently in the United States, large numbers of people indicate their attitudes and opinions on various public questions. In supporting a certain candidate a voter declares that he favors the stand taken by that candidate or that he opposes what has been done by the opposing candidate. If amendments or statutes are referred to the voters, there is an even more direct means of expressing opinion. The failure of the major political parties to take stands on current issues¹ during recent elections has doubtless done something to reduce the importance of the ballot as an expression of public opinion; on the other hand, the increased emphasis placed upon the personal element may counterbalance this loss to some extent. In other words, by voting for or against Franklin D. Roosevelt, who has been so long in the public eye that he represents definite social, economic, international, and political concepts, groups of citizens express their likes and dislikes in regard to regulation of business, American participation in world affairs, and the maintenance of social security. No method of expressing public opinion is basically more powerful than this, for political heads fall when the voters reveal their disapproval of a public official and political parties are thrown out—the most extreme penalty thus far devised. On the other hand, elections do not occur every day or indeed every year in the case of the more important officeholders and hence the ballot offers a somewhat infrequent opportunity of giving expression to popular desires.

If frequency is to be stressed in connection with the expression of public opinion, public-opinion polls deserve a good deal of attention, since they may be operated more or less continuously. The earlier polls were carried on under the auspices of newspapers² and periodicals, of which the best known was probably the *Literary Digest*; they sought to obtain a forecast of how an election would go, particularly who would be chosen President or

The Ballot

Public
Opinion
Polls

¹ For additional discussion of this point, see Chap. 8 above.

² The *Cincinnati Enquirer*, the *Chicago Journal*, and the *Columbus Dispatch* were among the newspapers which conducted successful polls.

governor. In general, approved statistical techniques were not employed, though very large random samples were often taken—in the case of the *Literary Digest* millions of post cards were sent to people whose names were ordinarily taken from telephone directories. Some of these polls succeeded reasonably well in hitting the mark, but the record was a spotty one and accuracy was more a matter of chance than of mathematical certainty. The *Literary Digest* poll of 1932 missed the mark by a wide margin, despite the reasonably good reputation of this periodical in taking samples, going back as early as 1916.¹ More recently the American Institute of Public Opinion (Dr. Gallup), the magazine *Fortune*, and Crossley, Inc., have been active in surveying public opinion, making use of selected samples which are more carefully chosen. The number of persons polled is very much smaller, but they are selected so as to represent different ages, sexes, occupations, incomes, educational backgrounds, geographical areas, and other factors which are considered to be important in determining the public opinion throughout the country.

The Gallup Institute proceeds by picking out certain sample areas throughout the United States; some of these are rural; others urban; small towns and large cities, rural areas remote from large cities and farming areas near metropolitan districts are all included on the basis of their relation to the make-up of the entire country. Agents are appointed in these areas and given instructions as to how many persons shall be included from the unemployed, the business men, the professions, the housewives, the large owners of land, the small farmers, the tenant farmers, the university graduates, the age group twenty-one to twenty-nine, and so forth. In certain cases a sample may not exceed fifteen persons, though on occasion a larger number may be contacted for a given study. Of course, the persons who make up the sample are not the same from month to month and indeed the basis of representation may differ, depending upon what question is being polled.

The popularity of the Gallup polls, the findings of which appear from week to week in many of the leading newspapers, would suggest that some public-opinion polls achieve a large measure of success. The reliability of the results is a matter of controversy, for as Professor Childs states: "It is very

The Gallup Polls

An Evaluation of Public-opinion Polls

¹ The *Literary Digest* carried on some nine nation-wide polls on prohibition, the presidential primary, the New Deal, and the outcome of a national election.

difficult if not impossible to establish their accuracy.”¹ If the public opinion arising out of an election is being sampled, there is no way to judge reliability until the election returns are in and then it is always possible that a shift has occurred at the last minute to discredit the results of the poll. The Gallup poll, after having made several reports as to the following of Roosevelt and Willkie in 1940, refused to take a stand on the day before election on the basis of a last-minute poll conducted by telegraph, maintaining that the margin was too narrow to permit valid conclusions. Nevertheless, it is probable that the results of polls having to do with candidates for public office are more reliable than those seeking to ascertain public opinion on political and social questions. At any rate a citizen can distinguish between two leading candidates, while a poll on a public issue necessitates framing questions in such a manner that those interviewed will know exactly what is involved. Any university student or instructor will know how difficult it is to phrase a question in such a way as to obviate all ambiguity and misunderstanding. The skill required is even greater when persons of very diverse background are being interviewed. All in all, there is reason to question the reliability of even carefully selected sampling if the information being sought involves a complicated question of rather technical character. Nevertheless, it can hardly be denied that large numbers of people do regard the findings as accurate and that public officials pay at least some attention to the public opinion as the polls report it. In the absence of any better barometer of what the people think and want, this is not surprising.

With the post office available to almost every citizen and the telegraph and telephone at least fairly accessible, it is to be expected that large numbers of persons will communicate directly with the members of Congress, the President, the members of state legislatures, and other public officials, stating what they think should be done in a certain matter. The mail of some of these officials is very heavy, while at times telegrams may pour in by the hundred. Long-distance telephone calls are less common as far as the national government is concerned, though they are often used to contact a state or local official. Some of those who send in their communications content themselves with a few words, some-

Direct
Communi-
cations to
Public
Officials

¹ See Harwood L. Childs, *An Introduction to Public Opinion*, John Wiley & Sons, Inc., New York, 1940, p. 59.

times of the form variety supplied by a pressure group; others take the pains to write long letters which set forth in detail what they have in mind. How much attention should be paid to these letters, telegrams, and telephone messages? Do they represent the opinion of a majority or at least a substantial minority of the population, or are they mainly the efforts of a few reformers or busybodies who have little or no following? Even when the most controversial questions are being considered and the bulk of these communications reaches a record level, only a comparatively small number of the whole number of inhabitants of the United States are represented. Here again there is no way to determine the representative character of the expressions submitted. However, many legislators pay very careful attention to them, even to the point of voting solely on such considerations; almost all public officials give the communications which are received some weight, especially if they seem to show any wisdom at all. Elected officials may be unduly sensitive to the wishes of their constituents, but they are generally reputed to be shrewd judges of the direction the political wind is blowing. The fact that old-timers who have served many years in public office regard the communications which they receive as worthy of serious consideration *en masse*, if not individually, is significant.

In a previous chapter the activities of the pressure groups in Washington and the state capitals were outlined.¹ It is not necessary to repeat that material at this point, but it should be borne in mind that the stronger pressure groups are often important channels through which public opinion is expressed. Public officials know from experience approximately what the strength of the farm lobby, the manufacturers' association, the American Legion, the National Education Association, and many other pressure groups is. They also can judge with some accuracy how vigorously a given pressure group is pushing for a bill or a policy, and by combining these they are able to estimate how much public opinion is in the background. Letters from the readers to the editor which regularly appear in many newspapers also may justify attention as an indication of public opinion. While some of these letters are written by cranks and chronic complainers, others are contributed by citizens who have more than ordinary opportunity to observe public opinion at the grass roots. Resolutions adopted by conventions, associations, clubs, churches,

¹ See Chap. 11.

and other groups are often transmitted to government agencies and officers; in some instances they are purely formal and cannot be taken seriously, while in other cases they may represent the collective judgment of large numbers of competent citizens. The recipients of resolutions have to evaluate the source; if the organization is one which resolves regularly and without much thought the resolution may be thrown into the waste basket, but if it resorts to such a device only rarely and then after discussion and deliberation a wise public official will give heed. Petitions may seem to fall into the same category as resolutions, though in general it is probable that they are less to be relied upon. Many people will sign virtually any petition in order to avoid saying "no" and to save themselves embarrassment—indeed experiments have been made to demonstrate that numerous signatures can be obtained to petitions urging the most arrant nonsense which no sane person would favor if he read the provisions.

THE CONTROL AND FOCUSING OF PUBLIC OPINION

Unless the opinions which the citizens hold in regard to public questions can be transformed from passivity into something more positive, it is not likely that the net result will be very great, at least in a constructive way. Passive dislike of the government and its policies, of course, makes for a weak citizenry and consequently a weak government; lack of any interest in public affairs at all also has far-reaching consequences, as we noted in discussing the obligations of citizenship.¹ However, in assessing the role of public opinion in the government of the United States we are particularly concerned with that collective opinion which can be brought to bear on those who are responsible for determining the policies and actions of the government. Occasionally there will be such vigorous interest in a matter that public opinion will more or less crystallize itself and be brought spontaneously to the attention of the persons in authority. However, as a rule there is not sufficient force back of individual opinion to generate a concerted collective expression, unless some outside agency is present to assist in mobilization. Quite frequently there may be no individual opinions to be focused until some individual or group has taken the initiative in bringing matters to the attention of large numbers of people. It might be expected that with all of the dissemination of news which characterizes this country almost every citizen of mature years

¹ See Chap. 7 above.

would have a point of view in regard to every public question. Yet when one recalls how many problems there are and how intricate some of these are and at the same time how busy the average person is earning a living, caring for a family, getting a formal education, or finding entertainment, it is not surprising that so many people have little or no idea at all about even highly important matters. In the succeeding paragraphs we shall discuss the various means of creating public opinion, controlling it after it has been created, and focusing it in so far as it already exists.

In a representative form of government it is sometimes asserted that a public officeholder should act only as a servant of the people, receiving their desires and carrying those desires into practical application in the government. Under a simpler socioeconomic system it might be possible for this concept to be put into effect, but the United States has long since become so large and so complicated that the leader in public life does not wait to be told what to do. That is not to say that he ignores the desires of his constituents when they are transmitted to him or that he goes ahead on his own initiative without keeping the people in mind at all. But the leader in politics realizes that the rank and file of the people are not in a position to know what is going on, what needs to be done to meet a certain situation, or what the result of a given policy will be.¹ Consequently he considers it his duty to take steps to bring important matters to the attention of the citizens, to fashion the resulting public opinion in such a manner that it will be enlightened and mature, and to focus that public opinion upon the branches of government in such a way as to compel action for the public good. All of the abler recent Presidents and governors have conceived of their duty in this light and many mayors, congressmen, and state legislators have had something of the same philosophy. As a result they have delivered addresses, prepared radio scripts, written articles, given interviews, and otherwise been active in calling the attention of the people to exigencies of the day, pointing out what action needed to be taken, and urging widespread expression of public opinion at the polls, through communications to members of legislative bodies, and by every other legitimate means. The fireside chats of Franklin D. Roosevelt are

¹ For an informing discussion of the role of the leader, see Sigmund Neumann, "Leaders and Followers," in R. V. Peel and J. S. Roucek, eds., *Introduction to Politics*, The Thomas Y. Crowell Company, New York, 1941, pp. 250-282.

examples of attempts on the part of a political leader to create, control, and focus public opinion. The messages of governors to state legislatures often fall into this category, though they are intended on their face for members of the general assembly. Interviews given the press frequently have this same purpose.

The success of a given leader depends in large measure upon his resourcefulness, his energy, his understanding of social psychology, his oratorical ability, his adroitness in phraseology, and the temper of the times. Even the most courageous and energetic leader may fail if prosperity is so prevalent that people refuse to concern themselves about public affairs. Conversely in a situation of general despondency and hopelessness it may be difficult for even a gifted leader to arouse the people out of their desperation. The efforts of certain Presidents and governors have been discussed in other chapters and may be referred to by those who are interested.¹

Effective-
ness of Po-
litical
Leaders

To supplement the efforts of the political leaders, many of the administrative departments of both the national and state governments have organized public-relations divisions, information services, and press agencies. Some idea of the scope of the program of the national government in this area may be gained from a survey which was carried on by the *New York Times* in the fall of 1941.² At that time the nondefense departments maintained twenty-six such agencies at an annual cost exceeding \$20,000,000; of this amount the Bureau of the Budget estimated that over \$13,000,000 would go for publications of one kind and another and \$6,150,300 for sending government employees around the country to explain the various programs which were being carried on. The twenty-six departments employed 208 persons on a full-time basis and 641 under part-time arrangements to prepare newspaper copy; an additional 35 full-time workers and 264 part-time workers were being used to prepare radio scripts; and 292 persons received salaries from the national government for developing material for motion-picture companies. The production of photographs was estimated to cost \$380,000; lantern slides and lecture materials added another \$146,200; while posters were down for \$99,600 in the fiscal year of 1942. The Department of Agriculture alone received \$11,887,788 during the

Govern-
ment
Agencies

¹ See Chaps. 14 and 37.

² See the *New York Times*, October 27 and 28, 1941, for the results of this survey.

fiscal year of 1941 for informational, educational, promotional, and publicity purposes.¹ The defense agencies had made a very promising start toward an elaborate program along these same lines by the beginning of 1942 and gave every evidence of developing even more ambitious plans. Eight different defense agencies employed 1436 newspaper reporters, psychologists, poets, cartoonists, song writers, clerks, and stenographers at a cost of more than \$10,000,000 in the fiscal year of 1942 "to inform the people of this country of the requirements, objectives, and progress of their defense effort."² The defense agencies maintained seven press sections, six radio divisions, and five motion-picture subdivisions in the fall of 1941.

The above facts will convey some idea of what is being attempted by the national government and what methods are being used. The

**Effective-
ness of Ad-
ministra-
tive Efforts** state programs are less elaborate, but they have substantially the same objectives and make use of about the same mediums. The question naturally arises as to how effective this work is in producing, controlling, and focusing public opinion. The amounts of money involved are quite large; the number of supposed experts employed is sizable; the quantity of mimeographed and printed releases runs into many tons. One managing editor of a metropolitan paper in the Middle West reports that he finds on his desk every morning a foot-high stack of materials sent out by national government public-relations and press agencies and that they are so worthless that they can be consigned to the wastepaper basket without loss—and it may be added that this editor professes to be a supporter of most of the New Deal program. He maintains that all of the releases and reports are poorly written, obviously intended for propaganda purposes, and include a minimum of factual material that would really inform the people of what the national government is doing. Another urban newspaper, less hostile though Republican in background, comments editorially: "Much of the information goes out in routine reports and enlightening answers to questions, but a considerable part of it is raw propaganda."³

But while the metropolitan press may make little use of the releases, the situation appears to be quite different in the case of the town and rural newspapers which stress advertising and local news items as far

¹ See the *New York Times*, October 28, 1941.

² See the *New York Times*, October 27, 1941.

³ *Indianapolis News*, November 19, 1941.

as their own efforts go and are often glad to use the articles supplied them by various governmental and pressure agencies as filler.

The task of the federal agencies is not too easy, since they must translate rather stodgy statistical data into interesting articles that the average citizen can understand. Considering the conclusion of the journalism department of Ohio State University that approximately 72 per cent of the newspaper readers in the United States cannot be reached by anything beyond the sixth-grade common-school level, this presents difficulties which are increased by the insistence of some of the top hats in the national government that the primary purpose of the public-relations and press agencies is to furnish personal publicity. The speakers sent out to address various meetings, the radio broadcasts of the Office of Education and other bureaus, and the films and exhibits sent about over the country perhaps make a more definite impress on the public mind.¹ Anyone who has observed at firsthand the efforts of the Department of Agriculture in stirring up the farmers to an awareness of their problems will not dismiss as futile the federal program of public relations and information.

If one is inclined to criticize the government for its attempts at controlling public opinion, a good antidote may be found in the efforts of the demagogues who seem to thrive on the fertile American scene. The energy of some of these creatures is almost unbelievable; their disregard of facts and general irresponsibility are striking. Some of them want \$200 per month pensions for all of those who have reached an age of sixty-five years; others literally tear their hair in their anxiety to stir up the American people against national defense preparations; still others seek to convince the millions of laboring men and women that the only thing that counts even during times of national emergency is a higher wage level. The least successful of these gentry use the street corner and the soapbox as their pulpit, but the really powerful ones have at their command national radio hookups, newspaper columns, periodicals of one kind and another, and other excellent facilities. A few even go so far as to use the halls of Congress as their sounding board. Being uninhibited by conventional standards of honesty, good taste, and reliability the demagogue often seems to be in a most advantageous position to create and direct public opinion. He can make the most extreme statements, paint

¹ For further discussion of the informational activities of government agencies, see Chap. 7.

incredibly vivid pictures, charge his rivals with the most dastardly crimes, all without foundation, and consequently he can sometimes bring hordes of gullible, sensation-loving people to his ranks. So great is the emotional control which he establishes over his followers that he can call for almost any amount of service and assistance without any monetary remuneration. This enables him to flood Washington or a state capital with telegrams on a few hours' notice and permits him to wield far-reaching power at times. Even though he behaves atrociously and violates every canon held by his disciples, he is often able to maintain himself because he has carefully inculcated into the minds of his followers that he is a martyr whom enemies charge with all manner of evil. At times the demagogue is a crank whose ideas are so absurd that no particular menace is created, but all too often he is an unscrupulous rogue who doesn't believe what he preaches and only cares to build up a personal following to gratify his own desire for power and perchance produce a handsome monetary profit in addition. At his worst, as represented by the Huey Longs, the demagogue seems to deserve classification as a serious menace to American political institutions.

The demagogue is oftentimes a past master at propaganda, preying ruthlessly upon the fears, the hopes, and the emotions of the aged, the mothers, the credulously patriotic, the poor, the tax-ridden, and other classes of the population. But he is by no means the only purveyor of propaganda in the United States to capitalize on public opinion.¹ The term "propaganda" is frequently associated with that which is untrue or half true, though strictly speaking it refers to the spreading of concepts rather than to the concepts themselves. Until World War I the term was in good repute, being used by certain religious sects to designate their foreign missionary societies.² At that time the various governments, including the United States under George Creel, organized elaborate agencies for the dissemination of information aimed at stirring up loyalty to themselves and hatred for the enemy.³ Atrocity stories were manufactured out of the whole cloth so to speak, or at most of very flimsy

¹ For an illuminating discussion of the nature and importance of propaganda in the United States, see H. L. Childs, *op. cit.*, pp. 75-128.

² The Catholics designate their society "The Sacred Congregation for the Propagation of the Faith"; the high-church Anglicans maintain The Society for the Propagation of the Gospel in Foreign Parts.

³ For a detailed discussion of propaganda efforts during World War I, see Harold D. Lasswell, *Propaganda Technique in the World War*, Alfred A. Knopf, New York, 1927.

material. For example, a news story relating that a Belgian priest ordered the bells of his church rung to warn his parishioners of the approach of the German armies was doctored up to read that the Germans used the priest as a human clapper to a church bell, ringing the bell until the father was dead.

A great deal was said and written in the United States about making the world safe for democracy and other somewhat idealistic matters which subsequent events seemed to prove as so much balderdash in the eyes of many. The shock produced by the debunkers after the Treaty of Versailles brought to propaganda an invidious meaning which has remained through the years. That is not to say that propaganda is always regarded as violently false or flagrantly evil, but there always lurks the notion that the intent is to delude, overimpress, or accomplish an end through ulterior motives.¹ The result is that large numbers of people manifest a certain cynicism, claiming that everything is propaganda and consequently unreliable. Even the efforts of Presidents and cabinet members to call the attention of the American people to the menace of Nazism and Fascism are branded by some as propaganda aimed at saving the British Empire or building up personal power for the chief executive.

From the discussion above it should be apparent that propaganda has a very intimate relation to public opinion, not only in the United States but throughout the world. It is used widely and effectively by many of the pressure groups which have been examined in the preceding chapter; it is the chief ammunition of the demagogue. Government departments are charged with employing it as a means of building up support or good will, and if the more invidious connotation is dropped and one has in mind an attempt to spread information and inculcate certain favorable attitudes there is no doubt that the claim is accurate. Political parties have long found it expedient to print tons of literature of a propagandistic character while their orators have uttered hours on hours of verbal propaganda. Despite the disillusionment of large numbers of people, this technique remains a vital force in creating and

Propa-
ganda and
Public
Opinion

¹ For additional information in regard to propaganda, see L. W. Doob, *Propaganda—Its Psychology and Technique*, Henry Holt and Company, Inc., New York, 1935; H. L. Childs, ed., "Pressure Groups and Propaganda," *Annals of the American Academy of Political and Social Science*, CLXXIX, entire issue, May, 1935; H. L. Childs, ed., *Propaganda and Dictatorship*, Princeton University Press, Princeton, 1936; and F. E. Lumley, *The Propaganda Menace*, D. Appleton-Century Company, Inc., New York, 1933.

controlling public opinion, for some propaganda is so subtle and cleverly disguised that it is almost, if not quite, impossible to detect it.

Contrary to the belief of many people, public opinion produced or focused by propaganda is not necessarily a deteriorating influence in American government. Some of it is distinctly vicious and deserves the most severe condemnation, but some of the public opinion growing out of such a device is excellent from the standpoint of strengthening the fabric of the American political system. It is important not to confuse the product with the technique employed to create the product; therefore, the public opinion produced should be analyzed and evaluated on its own merits rather than on the basis of the means used to crystallize it. That is not to say that the end always justifies the means, but it is true that the two are not identical and must be examined and appraised separately. The attitude that everything is propaganda and hence to be thrust aside is not one which a thoughtful citizen can hold even today when it is so difficult to know what to believe.

In the nineteenth century and well into the present century a great deal was, on occasion, heard about reformers. These persons were portrayed by cartoonists and popular writers as the strangest creatures imaginable. One of them might be described as a scarecrow of a man, tall and lank, with ill-fitting and somber-hued clothing, more often than not with cadaverous facial features. Stubborn obstinacy was indicated by a lantern jaw and sternly pursed lips; the merest child would know that he was cantankerous and unreasonable by the sour expression that invariably distorted his face. He was supposed to be lacking in common sense, good judgment, and ordinary cooperativeness; given to intense selfishness; motivated by the perverse satisfaction derived from inflicting pain on his fellows. Rarely accomplishing anything of real importance he was credited with compensating for his own frustration by making himself a social goad and a public nuisance. Of course, no such creature as this ever actually existed, though many sincere people took the stand for the initiative and referendum, suffrage for women, the direct election of Senators, the recall of public officials, and many other so-called "reforms."

The fact that these changes were all brought about either throughout the entire country or in certain states indicates that the reformers were successful in stirring up a considerable amount of public opinion.

Many of the proposals which they made were not accepted and when they found themselves in positions of public trust they sometimes did not know what to do. Even where they labored courageously and energetically they often were swept out of office after a single term before they had been able to carry into effect many of their plans. Altogether they made a substantial contribution to American public morality, though they were not always the most pleasant companions. They are now rarely encountered and in general belong to the colorful days of the past because, whether we realize it or not, their thunder has been stolen by political leaders. The Franklin D. Roosevelts and F. H. La Guardias have regularized and brought into the very inner sanctum of the government the principles once advocated by reformers.

**Influence
of Re-
formers**

Though reformers have more or less passed from the scene and reform has been given official recognition in high places, there is still need for community groups which organize to stir up and maintain at an effective pitch an alert public opinion relating to local government. In the larger cities, and in some of the smaller cities and towns as well, citizens' organizations—to the number of several hundred—are now functioning to this end.¹ National and international affairs receive the attention of the newspapers and the radio commentators, with the result that there is always a reasonably alert public opinion in those spheres. But local government tends to be prosaic in the eyes of many people, that is unless it involves a sensational case of embezzlement or shocking irregularity, and consequently large numbers of citizens pass their years in a city without knowing what is going on in the government. It is true that local government comes into more intimate contact with the people than either the state or national governments, but the fact remains that the indifference, ignorance, and inertia of large numbers of the people toward these governments is positively shocking. There is grumbling that the tax rate is so high and complaint that the services rendered are often so poor, but that is as far as the ordinary citizen goes. The result is the usurpation of control by political bosses and machines, which are primarily interested in their own selfish aggrandizement.

**Citizens'
Organiza-
tions**

¹ Several pamphlets have been issued by the National Municipal League dealing with these organizations. See, for example, "A Citizens' Council—Why and How?" and "Citizens' Councils in Action."

To meet this situation citizens' organizations have been formed.¹ Neighborhood groups bring in both the men and the women; a central committee, made up of representatives of the local organizations, serves to coordinate activities, decides on strategy, and marshals the efforts toward some concrete end. The main purpose of these groups is to stir up widespread public opinion which will result in greater efficiency, economy, and responsibility in local government. The achievements forthcoming in cities such as Milwaukee and Cincinnati deserve great praise. The strongest bosses find themselves helpless in the face of an aroused public opinion and give up their places; civic-minded leaders among the business and professional men assume the seats on the city council and employ experts to direct the administrative departments. During periods of more than twenty and ten years respectively Milwaukee and Cincinnati have improved old services and added new ones, constructed expensive public works, established national records in the fields of public health, traffic control, and fire loss, and all without adding to the aggregate debt or raising the tax rate above that of cities much less well off.² Able leaders have contributed to this record, but the most important factor has been widespread interest on the part of the citizens and an alert public opinion.

A considerable amount of space might be devoted to an examination of other agencies which are active in developing and controlling public opinion as it relates to public affairs. Despite the limited space available after all of the advertisements, comics, sport pages, household hints, and syndicated columns of one kind and another have been set up, newspapers do manage to find some space to devote to various matters having to do with government. Many of these stories are presented in such a matter of fact way that no effort is to be perceived to influence public opinion. Editorials, on the other hand, usually take a definite stand, while certain stories may be so written that they seem to be aimed at developing or directing public opinion. For some years there was a belief, fostered by the newspapers themselves no doubt, that in the last

¹ See Bessie Pierce, *Citizens' Organizations and the Civic Training of Youth*, Charles Scribner's Sons, New York, 1933.

² For additional information relating to these cities, see D. W. Hoan, *City Government—the Milwaukee Experiment*, Harcourt, Brace and Company, New York, 1936; Murray Seasongood, *Local Government in the United States*, Harvard University Press, Cambridge, 1933; and Charles P. Taft, *City Management: The Cincinnati Experiment*, Farrar & Rinehart, Inc., New York, 1933.

analysis public opinion in the United States was primarily formed by the press. Then in 1936 the voters reelected Franklin D. Roosevelt by a generous margin, despite the fact that a decided majority of the newspapers favored Landon. This had the effect of discounting the power of the press in the field of public affairs, but it still remains one of the more effective forces. The radio, the movies, periodicals such as *Life*, *Time*, and *Newsweek*, outdoor advertising, the churches, the schools, all have more or less important roles in forming and directing public opinion, but space prevents detailed consideration of their specific activities.¹

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¹ Numerous articles dealing with these instruments will be found in W. Brooke Graves, ed., *Readings in Public Opinion*, D. Appleton-Century Company, Inc., New York, 1928.

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SECTION III

THE NATIONAL GOVERNMENT: EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES


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graph TD
    CON["THE CONSTITUTION"] --> LEG["LEGISLATIVE"]
    CON --> EXEC["EXECUTIVE"]
    CON --> JUD["JUDICIAL"]

    LEG --> CONGRESS["THE CONGRESS<br/>Senate<br/>House"]
    CONGRESS --> LEG Committees["Archives of the Capital<br/>Government Printing Office<br/>Library of Congress<br/>United States Botanic Garden"]

    EXEC --> PRES["THE PRESIDENT"]
    PRES --> EXEC OFFICE["Executive Office of the President"]
    PRES --> EXEC DEPT["Department of the Navy<br/>Department of the Interior<br/>Department of Agriculture<br/>Department of Commerce<br/>Department of Labor"]
    PRES --> EXEC AG["Federal Housing Agency<br/>Federal Security Agency<br/>Federal Works Agency"]

    JUD --> SUPREME["THE SUPREME COURT OF THE UNITED STATES<br/>Chief Court of Appeals of the United States<br/>District Courts of the United States<br/>Court of Claims of the United States<br/>United States Court of Customs and Patent Appeals<br/>Territorial Courts"]
  
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FIG. 1. Reproduced from the *United States Government Manual*.

CHAPTER XIII

THE OFFICE OF PRESIDENT

DESPITE the doctrine of judicial supremacy, which at least until recently has been generally considered the most distinctive feature of the political system of the United States, the office of President has almost always been the focus of popular attention. Large numbers of citizens have known only vaguely about the cases decided by the Supreme Court—they have even scarcely been able to name the chief justice, to say nothing of the associate justices of the court. But the presidency has been and is constantly in the public eye. The mass of citizens may not have a very integrated knowledge of the exact functions of an incumbent of that high office; yet they follow even the personal life of the President with avid interest. There may be Rip Van Winkles who could not name the holder of the office at any particular time, but it would require a Diogenes to find many residents who are so cut off from the world in which they live that they could not name the incumbent President and tell a good deal about his personal background. The very fact that this office is so well known gives it a prestige which no other public position in the United States begins to match; moreover, that popularity surrounds the office with authority which transcends even the generous grant of power conferred by the Constitution and laws.

The men who drafted the Constitution of 1787 held divergent views in regard to almost every public question. Particularly is this apparent in the provisions which they made for the position of chief executive. Some of them felt that an hereditary kingship might best serve the public weal; others recalled the arrogance of the colonial governors and were reluctant to take any steps that might eventually create a President who would display that characteristic. However, in general the delegates inclined toward a reasonably strong executive, knowing all too well the trials and tribulations of a government which had no single leader at its helm. The office, then, as it was set up under the terms of the Constitution,¹

Evolution

¹ Article II of the Constitution deals with the executive branch and is largely devoted to the office of president.

was no inconsiderable one. Moreover, with such men as George Washington, Thomas Jefferson, and James Madison as its first holders, it at once assumed a luster which was not enjoyed by legislative or judicial positions. Nevertheless, despite its auspicious beginnings, the presidency suffered some deterioration under the administrations of such exemplars of mediocrity as Tyler, Fillmore, and Pierce whose names are associated with little more than mere occupancy of the highest office in the land.

Fortunately, Lincoln came along before too much weakening had taken place and the presidency again assumed a commanding position. There have been such nonentities as Arthur and Harding in the White House since the days of Lincoln, but the general level has never fallen to the depths which were characteristic of the period between the galaxy of distinguished and able first holders and the election of Lincoln. Indeed the office has taken unto itself more and more prestige and authority as the years have passed, until at present it stands at the very apex of the pyramid of American government. It is sometimes said that no office in the world has as far-reaching powers as that of the presidency. Sidney and Beatrice Webb were so impressed by the enlargement of its role achieved by Franklin D. Roosevelt almost immediately after he took office in 1933 that they classed the American presidency with the European dictatorships of Hitler, Mussolini, and Stalin.¹

It is very difficult, if not impossible, to compare the presidency with the dictatorships of Europe. Local conditions, national psychology, and various myths and legends that surround Hitler and his fellow dictators make it almost out of the question to establish a basis of comparison which is at all reliable. No one can doubt the notable accentuation of the authority attached to the American presidency; nor can one minimize the commanding position of the holder of the office in the United States as well as in world affairs. But is that equivalent to the declaration that the President is the chief wielder of political authority in the modern world? Certainly his techniques are more refined and subtle than those associated with Adolf Hitler; he cannot ordinarily act with anything like the speed of the Fuehrers² and Duces; and he attracts

¹ See Sidney and Beatrice Webb, *Soviet Communism*, 2 vols., Charles Scribner's Sons, New York, 1936, Vol. I, p. 431.

² Hitler has on occasion arrested, tried, sentenced, and executed opponents during a single day.

The Presidency Compared with Dictatorships

less of the hysterical worship so widely accorded successful dictators.

No matter whether the presidency is ranked above, with, or below the dictatorships on the basis of final authority, few would deny that it has developed into a position which the forefathers did not envision. The writings and debates of the early leaders of the republic show quite clearly that the President was conceived of as more a titular executive than as the actual wielder of extensive power. The honor attached to the chief executive-ship was to be great; the formal role was given first place; but the day-to-day activities were not regarded by the framers as particularly outstanding or indeed arduous. While the presidency was not surrounded by the divine aura with which the Japanese have endowed their Son of Heaven emperor, nevertheless, there was a somewhat¹ similar concept which would have placed its incumbent above the everyday operation of government.¹

General
Status of
the Ex-
panded
Office

The striking development which has made the President the actual as well as the titular leader of the country is variously interpreted by students of government as well as by the people. For the most part, the former regard what has taken place as logical, although perhaps accompanied by certain dangers. Professor William B. Munro declares: "It [the presidency] was certain to become the center of federal authority and the symbol of national unity."² Professor E. S. Corwin regards the change as "the direct consequence of Democracy's emergence from the constitutional chrysalis," but adds, "That, on the other hand, these developments leave private and personal rights in the same strong position as they once enjoyed would be quite impossible to maintain."³ Many citizens view the transformation—the word is used advisedly, for the evolution has brought changes so far-reaching that the administration of Franklin D. Roosevelt is scarcely on the same plane as that of Thomas Jefferson—with distinct alarm. Some of them cannot refer to the enlarged role of the presidency without becoming wrought up emotionally, either displaying unmistakable anger or genuine regret. Modern Jeremiahs and Amoses

¹ The Japanese emperor is informed of what transpires, but he acts himself only on rare occasions when he issues an imperial rescript.

² See his *The Government of the United States*, rev. ed., The Macmillan Company, New York, 1937, p. 156.

³ See his *The President: Office and Powers*, New York University Press, New York, 1940, p. 316.

go about predicting the most dire consequences, even to the complete downfall of the republic and the disappearance of democracy.

Thus far, the results of the "new presidency"—to use Professor Corwin's designation ¹—have not been of such a nature as to furnish ~~What of the~~ a basis for a categorical conclusion. There was a disposition ~~Future?~~ a few years ago to maintain that the position laid such unparalleled responsibilities on the shoulders of the incumbent that no human being could long endure. The fatal illness of Woodrow Wilson, the death in office of Warren G. Harding, and the early decease of Calvin Coolidge after surrendering the presidency, were all cited as proof of such a contention. However, the rise of the dictators has revealed that in a single man is an almost unlimited capacity to assume power over the daily lives and destinies of millions of people. Furthermore, the record of Franklin D. Roosevelt during years of unsurpassed domestic and international difficulties seems to refute such an assumption.

Looking at the immediate situation, one may assert that the expanded powers attached to the office have permitted the President to give vigorous attention to matters which at an earlier ~~The Immediate Result~~ date were left in the hands of private business, the states, or fate. To what extent such positive steps have contributed to the general welfare of the country is a moot question. Some citizens vociferously declare that these presidential measures have hindered rather than helped; that they have prevented reemployment because business confidence has been destroyed; that they have plunged the country into a morass of debt which will eventually lead to the most widespread misery. On the other hand, there are others who are equally sure that the country has been saved from revolution and disintegration by the President's strong leadership in dealing with the banks and in providing public assistance to the millions of needy.

The election results of 1936 and 1940 indicate without much doubt that the rank and file of the people favor the more prominent role of the President. Thus far, despite all of the gloomy prophecies, the country has managed to survive, though pressed within and without by the most complicated and fear-generating situations. Moreover, there has been no discontinuance of elections, no establishment of

¹ See *ibid.*

concentration camps,¹ and comparatively little diminution of freedom of speech and of the press. Property rights have, on the other hand, been curtailed both by the passage of regulatory legislation and by the imposition of heavy corporation and individual taxes. Professor Corwin points out that the office of President has become "dangerously *personalized*" by the striking development which we have noted, both because the leadership which it provides is "dependent altogether on the accident of personality," and because no agency is at present set up in the government to furnish unbiased and compulsory advice.²

It is too early to see clearly what the final result will be. A disastrous defeat at the hands of the external enemies of the country might lead to the complete overthrow of the system, presidency and all. The continuance of widespread unemployment³ might eventuate in an internal chaos which would have more or less the same effect. The financial collapse of the country as a result of the tremendous borrowing program might be blamed on the unchecked powers conferred on the chief executive. On the other hand, if the internal and external problems which confront the United States can be surmounted and survived, a very impressive stamp of approval will be placed on the transformation in the office of President.

CHOICE OF A PRESIDENT

The framers of the Constitution wanted to safeguard the presidency against the dangers which they visioned as attendant upon mob choice and consequently arranged a rather cumbersome system of indirect election.⁴ The comparatively small number of enfranchised were to choose representatives to a reasonably small electoral college, which

¹ These words were written prior to 1942. The entry of the United States into World War II led to the establishment of camps for certain enemy aliens and the removal of citizens with Japanese antecedents from their homes on the Pacific Coast. There were still no concentration camps in the ordinary sense.

² See *op. cit.*, p. 316.

³ After all of the efforts of President Roosevelt, involving the expenditure of billions of dollars of public funds, from seven to ten million persons remained unemployed at the end of 1940 when the armament program got under way.

⁴ It is interesting to note that some members of the convention apparently felt that the President should be closer to the people than was eventually planned. Alexander Hamilton's suggestion included election of the President by manhood suffrage, while Gouverneur Morris, probably much influenced by the opinion expressed in John Adams' *Defence of the Constitutions of Government of the United States of America*, argued that the President should be the mediator between two classes in society and much closer to the people than the legislators. See on this subject C. Warren, *Making of the Constitution*, Little, Brown & Company, Boston, 1937.

was vested with the power to canvass the field of available candidates and make the best possible choice. Political parties were given no part in the process; indeed no provision at all was made for nominations. It has already been pointed out in connection with the chapters on political parties¹ that the carefully drawn-up plans of the framers did not prove very practicable. The election of 1800 saw an embarrassing situation fraught with danger, which the men of 1787 had not anticipated. The addition of the Twelfth Amendment modified the arrangement by specifying a separate casting of electoral votes for President and Vice-President, but even this step was not enough to save the system from substantial modification by usage. Political parties displayed surprising vigor and soon assumed the function of nominating candidates, not only for the presidency but also for presidential electors. Inasmuch as the nomination of a President seems to fall more directly under the activities of political parties than at this point, it has been dealt with in some detail in connection with the national party conventions.² Assuming that the student is already familiar with that preliminary step, we will proceed to trace the choice of a President beyond that point, pausing a moment to look at presidential primaries.

The adoption of the direct primary as a device for the nomination of candidates for state and local office was regarded by its proponents as an argument for its expansion to the presidential arena. **Presiden-
tial
Primaries** More than twenty states, following the lead of Wisconsin in 1905, ordained that the delegates to the national party conventions should be chosen not by state and local party conventions but through use of the direct primary.³ A number of states went further and stipulated that the voters in naming their representatives to the national conventions should instruct them as to which candidates they were to support. For a few years the new scheme seemed to be attended with considerable promise, great enthusiasm being displayed for it. But a majority of the states refused to adopt it and hence there was no opportunity for the popular mandate to control the national conventions. Since 1916 not a single state has found it desirable to adopt presidential primaries, while a substantial proportion of those which had already put them into effect before that time

¹ See Chaps. 8 and 9.

² See Chap. 9.

³ In 1916 more than half of the delegates to the national conventions were chosen in this manner.

have abandoned them.¹ Therefore, at the present time presidential primaries do not play any very important part in nominating presidential candidates; some of the outstanding candidates go so far as to refuse to enter their names in the states which continue to make use of this device. Nevertheless, while of little practical import, presidential primaries still occasion considerable public interest, especially in those states which hold their primaries well before the conventions. If a certain candidate runs strongly in a presidential primary, that fact is supposed to enhance his general popularity on the ground that nothing succeeds like success and that everyone wants to be on the band wagon.

After the national party conventions have designated the candidates for the office of President, the state and local party organizations, either at conventions or primaries, proceed to nominate candidates for seats in the electoral college.² Each state is apportioned as many electors as it has seats in Congress. Inasmuch as the positions are purely formal in importance and carry no compensation, at least of consequence, no great amount of competition accompanies the process of selection. Ordinarily some attempt is made to honor outstanding members of the party, but not infrequently nominees will be so obscure as to be utterly unknown to the general public. The lack of importance attached to the individual electors is such that some states do not even list their names on the ballot, for that would add to the expense of holding the election without serving any useful purpose.³ In casting his ballot the average voter doubtless thinks of himself as directly supporting the presidential nominee whom he favors—it is questionable whether in most instances he could even name the electors for whom he has voted.

While the Constitution intended to confer wide discretion on the electors in the choice of a President, custom has ordained that these officials act in a purely perfunctory manner. Indeed if an elector dared to cast his ballot for any other than the official nominee of his party, it would be the occasion for front-page headlines in the newspapers— if not for lunacy proceedings against him. There is a common mis-

¹ Iowa, Minnesota, Vermont, Montana, North Carolina, Indiana, Michigan, and North Dakota have all abandoned presidential primaries.

² In some states this is done before the national conventions are held.

³ Some sixteen states omit names of electors from the ballot and substitute names of the presidential and vice-presidential candidates. See L. E. Aylsworth, "The Presidential Short Ballot," *American Political Science Review*, Vol. XXIV, pp. 966-970, November, 1930.

conception to the effect that the electors from the various states journey to Washington in order to cast their votes—possibly the term “college” implies at least a brief gathering in one place. Actually the electors assemble only in their respective state capitals, never as a body in the national capital. A national law requires that the electors meet on the first Monday after the second Wednesday in December following the elections in November. At this time they vote separately for President and Vice-President, arrange to have lists prepared showing the results of their balloting,¹ and send these lists in duplicate, together with their certificates of election, to the president of the Senate in Washington.

The Twelfth Amendment of the Constitution provides that the “president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.” On the sixth day of January the Senators and Representatives meet together in the chamber of the House, with the president or president pro tempore of the Senate presiding. Each house designates two tellers—one Democrat and one Republican—who receive and tabulate the returns as they are opened by the presiding officer. The candidate receiving the majority of electoral votes for President is declared elected by the presiding officer and the results are recorded in the journals of the two houses. Likewise a Vice-President is formally announced. Inasmuch as every citizen has known the outcome since early in November, it may be seen that these proceedings are purely formal, unless perchance no candidate shall have received a majority of the vote or unless a decisive number of electoral votes are in dispute.

Occasionally there may be some question as to the electoral votes of a state, although this rarely happens at present. Prior to 1887 there was no definite procedure for settling cases in which there is uncertainty. In 1876 the two candidates ran neck to neck; Tilden had a plurality but not a majority of the electoral votes, while the electoral votes of four states were in dispute, all of which Hayes required to be elected. In order to handle the situation a special commission of five Senators, five Representatives, and five Supreme Court judges was set up and charged with deciding to whom the disputed votes would go. Since the Senate was con-

¹ Actually all votes are cast for one person under the system now used by all states, for all electors are of one party.

trolled by one party and the House of Representatives by the other, their ten members of the commission included five Democrats and five Republicans. It was expected that the five judges would be above partisanship, but in the voting three of them consistently upheld the claim of the Republicans to all of the challenged votes, thus leading to the election of Hayes by a margin of a single vote. The Democrats cried out that the election was stolen from them. After a decade when they came into power with the election of Cleveland, the resulting resentment led to the passage of a statute, which it was hoped would obviate a repetition of this situation.

Under the terms of the Electoral Count Act of 1887 disputed electoral votes are supposed to be investigated and decided by the states involved. If a state is able to straighten out such confusion within six days of the date set for the meeting of the electors, the Federal government will accept its decision without question. If no settlement can be reached and two sets of electoral votes result, the two houses of Congress, meeting separately, may try to agree on a choice. If the houses fail in their attempt, any set of returns approved by the governor of the state involved shall be counted. Finally, if every one of these possibilities is abortive, the state loses its voice in electing that particular President. The majority of the states have not carried out their responsibility under the act of 1887 to set up the necessary machinery for handling cases of dispute; but fortunately there has been no recurrence of the trouble manifest in 1876, and consequently there has been no occasion to make use of the states.

**Provisions
of the Act
of 1887**

If the electoral vote is so divided that no candidate has a majority of votes, the House of Representatives is charged with electing a President from among the highest three,¹ each state having one vote. A bare majority of votes in the House is sufficient for this purpose. Although there seemed some possibility that the election of 1912 might be thrown into the House of Representatives, President Wilson received a majority of the electoral votes although by no means a majority of the popular vote.² The last election of this sort was that of 1825, when the House chose John Quincy Adams in preference to Jackson, Crawford, and Clay. Any migration from the

**Lack of a
Majority**

¹ See Amendment XII.

² Wilson received 435 electoral votes, Roosevelt 88, and Taft only 8. However, Wilson's popular vote was some six million in contrast to about seven and one-half million votes received by his opponents.

biparty to a multiple-party system, even if only three parties were to be used, would doubtless result in elections by the House of Representatives or, what is more likely, a complete overhauling of the electoral system.

Ordinarily the winning candidates poll both a majority of the electoral votes and a majority of the popular votes, although the **Minority Presidents** exact ratio may be far from the same in each case. However, on a few occasions candidates who have received only a plurality, and sometimes even a minority, of the popular votes have been declared elected President. Both Lincoln and Wilson were in their first terms plurality Presidents—that is, they did not receive a majority of the popular votes, but they did poll more votes than any other candidate. In the Hayes-Tilden election, Hayes, the successful candidate, actually received about three hundred thousand votes fewer than Tilden, while Harrison was elected President in 1888, despite the fact that his popular vote fell something like one hundred thousand behind Cleveland's.¹

As a result of the several cases which characterized the last half of the nineteenth century considerable popular sentiment developed in favor of the substitution of direct popular election for the **Direct Popular-Election Proposals** cumbersome and outmoded electoral college. It is probable that a frequent recurrence of "minority" Presidents during recent years would have resulted in some change, but since 1888 no President has received a smaller popular vote than his opponent and only one plurality President has held office. Therefore while almost everyone admits that the present system leaves something to be desired, there is no general agreement as to what substitution might be advantageous—and, more than that, no widespread sentiment back of any modification at all. Until some future electoral experience focuses the attention of the people on this matter, it is likely that the present arrangement will remain in effect.²

The traditional time for the President to take office was long **Taking of Office** March 4, a date that offers some advantages over January 20, which has been in effect since October 15, 1933. For

¹ For the exact figures, see E. E. Robinson, *The Presidential Vote, 1806-1932*, Stanford University Press, Stanford University, Calif., 1934.

² A constitutional amendment, sponsored by Senator Norris, which provided for the abolition of the electoral college as a piece of machinery but retained the plan of voting by states and election by plurality in a majority of the states was introduced into the Senate in 1934. It twice narrowly failed to get the requisite two-thirds vote (42 to 24 on May 21 and 52 to 29 on May 22).

one thing, the weather conditions in March are usually more favorable for the inauguration ceremonies which are by custom held out of doors. However, the old delay of some thirteen months between the election of members of Congress and their exercise of authority was so intolerable that it finally led to the Twentieth, or "Lame Duck," Amendment. Since it provided that Congress convene on the third of January, it was felt that the date of inaugurating a President should be advanced to January 20, so that a new Congress would have a new President with whom to work. Neither of the inauguration days since the new date became operative have been very clement and in 1941 some fear was expressed lest President Roosevelt suffer from the exposure incident to his inauguration.

The framers of the Constitution naturally gave their attention to questions which were particularly burning when they assembled, leaving the details of other problems to be worked out in the future. Among other omissions was that of a provision for succession to the presidency in case the Vice-President should die or become incapacitated. Nor was any rule laid down as to what should be done if a President-elect died before taking office.¹ It was not until almost a century had elapsed that Congress in 1886 finally passed the Presidential Succession Act which named the Secretary of State as next in line after the Vice-President and which placed other cabinet members, then provided for by law, as successors on the basis of the seniority of their departments. Naturally, these secretaries must meet the qualifications in regard to birth and age and the law apparently permits them only to "act" as President. There has, of course, been no occasion for application of the act since it was passed; hence there is some vagueness about the exact legal position a successor beyond the Vice-President would enjoy. The Twentieth Amendment further clarified the situation by providing that the Vice-President-elect shall become President if the President-elect dies before inauguration. Moreover, if a President-elect has not been chosen or if he fails to qualify for office, the Vice-President-elect is authorized to "act as President until a President shall have qualified."

Filling of
Vacancies
in the
Presidency

¹ The Constitution authorizes Congress to provide for the filling of the office in cases of removal, death, resignation, or inability. In 1792 Congress passed legislation which provided that the president pro tempore of the Senate should be next in line after the Vice-President and then the speaker of the House. But this was not regarded as satisfactory.

FACTORS THAT ENTER INTO THE CHOICE OF A PRESIDENT

Despite their positions of legal equality, the forty-eight states have by no means taken turns in furnishing a President. Indeed, even some of the older and more populous states have had nothing like their share. Until 1928 no state west of the Mississippi had contributed a chief executive.¹ The southern states, with the exception of Virginia which sometimes claims to be the "mother of Presidents,"² have not fared well. Even a state as large and wealthy as Pennsylvania can make no brave showing with native sons who have filled the presidential chair. Of the eight holders of the office since the beginning of the century, three have hailed from Ohio, two from New York, and one each from New Jersey, Massachusetts, and California. In general, then, geography does not enter into the choice of a President to the extent that it might.

So-called "pivotal" states are supposed to be favored when it comes to the choosing of a chief executive, although there is some question as to why certain states are popularly included in this category while others are omitted. States that may be depended upon to support one party's candidate, irrespective of his residence or his qualifications, are not given much consideration in nominations, for parties reason that these states are already in the "safe" column. Thus the southern states are not strong claimants for Democratic consideration because their record of party loyalty is virtually without stain. But a populous state which is fairly evenly divided politically is another matter—picking one of its citizens may swing the state to support a particular party. Ohio and New York have long been regarded as outstanding examples of pivotal states, and hence they can display very bright records as far as occupants of the White House constitute a criterion. On the other hand, Indiana, which the Gallup poll declared to be the most perfect election barometer among the states during the years 1860–1940 furnished only a single President during that period.³ Although it may be argued that Indiana does not have a large enough electoral vote to entitle it to an

¹ Herbert Hoover was a native of Iowa but had held legal residence for many years in California.

² Virginia contributed an imposing number of the earlier Presidents, but has not been frequently honored during recent decades.

³ Wendell Willkie claimed Indiana as his state, although he had not actually lived there for some years. The Gallup study during October, 1940, showed that Indiana has varied approximately 1 per cent from the national vote in presidential years.

unchallenged position among the pivotal states, still Ohio, which has been adjudged to be pivotal more frequently than any others since the turn of the century, accounts for far fewer electoral votes than New York or even Illinois.

The character of the times has something to do with the choice of a President. If complicated internal or external problems are demanding attention, it is likely that a man who has a record of vigorous and aggressive action in public office will be designated. Time

Possibly the man of richest background will be ignored and someone less experienced will be taken, but it is quite improbable that a "dark horse" will be selected. The voters at such a time will be eager for a strong, decisive leader, and consequently they will not be impressed by a candidate who has not had much public acclaim or much experience in handling important affairs.¹ Conversely, if the government has pursued a very aggressive policy for several years and if a national emergency has just been experienced, the people may unconsciously desire a weak incumbent in the presidential office. They want to rest for a time from governmental demands; they desire officials who will not seek fame from ambitious public achievements; and consequently they favor a candidate whose past record indicates that he will be content merely to fill the office.² Thus after Theodore Roosevelt, William Howard Taft was selected; after Woodrow Wilson came W. G. Harding. If reasonably normal conditions are in the offing, there is a probability that the successor to Franklin D. Roosevelt will be a man of this latter type.

Although the people of the United States have been inclined to hold professional politicians in contempt, a considerable number of their Presidents have been drawn from the ranks of those who, if not professional politicians, certainly have been Experience long active in politics. Calvin Coolidge devoted the major part of his adult life to holding local office in Northampton, to legislative and executive activity in Massachusetts, and finally to the vice-presidency and presidency of the United States. Franklin D. Roosevelt and Theodore Roosevelt did little else than interest themselves in the politics of New York and Washington after leaving Harvard. Harding

¹ There were many who considered the lack of previous political experience as a serious handicap in the case of Wendell Willkie.

² Professor William B. Munro has developed this thesis in a convincing manner in his "The Law of the Pendulum," in *The Invisible Government*, The Macmillan Company, New York, 1928, Chap. III.

had for years devoted himself to Ohio politics before he entered the Senate and finally moved over to the White House. Taft, although a lawyer by profession, had given much of his time to Ohio politics before serving as governor general of the Philippines and a member of the President's cabinet. Of the chief executives since 1900 only Woodrow Wilson and Herbert Hoover had achieved eminence in fields other than politics before they entered the White House,¹ and even they had not gone directly from education and engineering to the presidency—Wilson had served as governor of New Jersey while Hoover had been well known as Secretary of Commerce. Membership in the bar may serve as a convenient occupational relationship, although more often than not such a professional connection has been largely nominal. Lawyers first of all become active in politics; then they get themselves elected as state governors or United States Senators; finally they are elevated to the office of chief executive—immediate transfer from active legal practice to the White House is most unlikely.

On the other hand, it is not well for one who is ambitious to hold the presidency to have had too long and particularly too spectacular a political career. Despite the large sphere which we accord to politicians—perhaps the largest to be observed in any country, we still have an innate suspicion of the political gentry. Hence if an aspiring candidate has been too closely identified in the public mind with politics, especially of the machine variety, he may find scant enthusiasm for his ambition. Holding local office does not seem to lead toward the presidency at all, although it might be supposed that experience as mayor of New York City or Chicago would be reasonably valuable. A governorship in a pivotal state, membership in the President's cabinet, or a seat in the national Senate seem to offer the best opportunities to one who is eager to climax his career by serving his country as President. Of the eight chief executives during the present century, four have held office as governors of states and an additional one as governor general of a territory, two have been Senators, and two have been well known as cabinet members.

Interestingly enough, business executives seem to be lightly considered for the first public post in the country. Wendell Willkie, had

¹ Taft is sometimes regarded as another case of one who had achieved eminence before entering public life. Certainly as chief justice of the Supreme Court he deserves distinct recognition in the legal field, but whether such a reputation should be accorded during his earlier career is a question.

he won election in 1940, might have broken the long-established tradition against recognition of business experience.¹ As it is, only Harding and Hoover can be even remotely connected with **Business Experience** business careers and in neither case has the association been impressive.² Just why there has been so little disposition to honor successful business men it is difficult to see, especially when the national psychology has accorded a prestige to business careers which is not to be equaled anywhere else in the world. In many respects the management of a large corporation should confer upon men of affairs experience that might be quite valuable in the presidency. As it is, we treat politicians with more than a little contempt and business executives with more than a little respect; yet we elect the former as chief executives while at the same time we set up a bar against the latter.

Is it the practice in the United States to select eminent men for elevation to the presidency? The forthcoming replies to this query will give support to almost any point of view. There are, **Eminence** of course, numerous cases of outstanding men who have not been awarded that honor, despite their willingness to accept its inherent responsibilities. However, there is but one office of President with which to reward distinguished men, which, of course, means that even eminence can be recognized only for a few among many. The mere fact that certain men of great merit and wide reputation have been ignored does not in itself necessarily mean that the holders of the presidential office have been nonentities.

Writing half a century ago, Lord Bryce expressed surprise that the Presidents of the United States have been on the whole so mediocre: "Since the heroes of the Revolution died out with Jefferson, Adams, and Madison, no person except General Grant **The Judgment of Foreign Observers** has reached the chair whose name would have been remembered had he not been President, and no President except Abraham Lincoln has displayed rare or striking qualities in the chair."³ A fellow countryman, Professor H. J. Laski, has reflected

¹ There is some difference of opinion as to how much business experience Willkie has had. Despite the titular position which he held in the Commonwealth and Southern Corporation, some critics declare that he was largely a public-relations man.

² Harding was the principal officer of a newspaper in Marion, Ohio. Hoover as a mining engineer made a rather large amount of money by extracting precious metals from low-grade ores.

³ See his *The American Commonwealth*, 2 vols., The Macmillan Company, Vol. I, New York, 1910, Chap. 8.

the same point of view very recently, maintaining that American Presidents have for the most part been distinctly mediocre in contrast to British prime ministers who, with the possible exception of Sir Henry Campbell-Bannerman, have for a hundred years been men of outstanding ability.¹ It is probable that these two men are fairly typical of foreign observers, although when they deliver lectures or write for consumption in the United States a more flattering tone may be adopted. Even the brilliant professor of political science at the University of London underwent a distinct "conversion" when he lectured on the presidency of the United States at an American university and subsequently arranged his material for publication as a book of the month.² Admitting that eleven of the Presidents have been "extraordinary men"³ Professor Laski confesses that his countrymen "are tempted to remark on the fact that many of the Presidents of the United States have been very ordinary men,"⁴ adding that "there is no foreign institution with which, in any basic sense, it can be compared,"⁵ thus necessitating its analysis in "American terms."⁶

While American students willingly confess the shortcomings of chief executives such as Tyler, Fillmore, McKinley, and Harding and do not ascribe the most brilliant accomplishments to numerous others, including Taft, Coolidge, and possibly Hoover during the present century, it is difficult for them to see that foreign governments have done perceptibly better in picking their executives. Except possibly for Poincaré, the presidents of France under the Third Republic were certainly more ordinary than the corresponding officials in the United States. The premiers of France surpassed the French presidents in eminence, but even so many of them were at best mediocre. British prime ministers are frequently placed on a pedestal by Englishmen and indeed some of them would be adjudged great men under the standards of any country. Nevertheless, not all are examples of first-rate ability in the eyes of many American students of government. Setting off a Winston Churchill there is a Neville Chamberlain; neutralizing the record of Lloyd George there are the Bonar Laws and the Ramsay MacDonalds. The first Presidents of the United States—Washington, Adams, Jefferson, and Madison—set a very high standard which was sadly

¹ See his *Parliamentary Government of England*, The Viking Press, New York, 1938, p. 243.

² Under the title *The American Presidency*, Harper & Brothers, New York, 1940.

³ *Ibid.*, p. 8.

⁴ *Ibid.*, p. 8.

⁵ *Ibid.*, p. 11.

⁶ *Ibid.*, p. 11.

lowered by most of their nineteenth-century successors, although Abraham Lincoln marked a glaring exception and Andrew Jackson and Grover Cleveland would be accorded outstanding ability by many competent judges. During the twentieth century the general record seems distinctly superior to that of the nineteenth. Although we are too near most of the recent holders of the office to measure their virtues without emotion, at least three out of the eight would seem to deserve an exceptionally high rating in contrast to one or two who were totally lacking in strength of character and marked capacity.¹

QUALIFICATIONS, TERMS, AND PERQUISITES OF THE OFFICE

The formal qualifications which are established by the original Constitution are neither numerous nor particularly onerous. A minimum age of thirty-five years is expected, along with natural-born citizenship in the United States. ^{Qualifications} Moreover, candidates are required to have resided in the United States for at least fourteen years, although such residence does not necessarily have to be consecutive.² Before assuming office a President-elect must take the following oath: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."³

Qualifications imposed by custom are more numerous and perhaps more burdensome. As noted in the discussion of the factors that enter into the choice of a chief executive, geography, time, experience, occupation, and ability are all to be considered as intimately related to the actual specifications laid down by the Constitution. It may be added that convention has also ordained a more advanced age than the thirty-five years stipulated by the Constitution itself—men under fifty are rarely nominated. Although women are equally eligible with men for the office, tradition has placed a very weighty obstacle in

¹ Woodrow Wilson and the two Roosevelts, irrespective of their political views, will probably be given outstanding places by future historians. Harding is certainly not likely to fare well, while McKinley is sometimes regarded as scarcely more able.

² The question was raised by opponents as to whether Herbert Hoover met the requirement of residence. He had not been a resident for fourteen consecutive years immediately prior to his election, but had resided in the United States considerably more than fourteen years all told.

³ Art. I, sec. 7 of the Constitution.

their path to that office, which, of course, has never as yet been surmounted. Alfred E. Smith has always contended that he was crucified because he was a Roman Catholic.¹ How effective a bar religious affiliation may be it is difficult to ascertain; something doubtless depends upon the spirit of the times. It seems probable that less objection would be made to Catholic religious tenets now than during the 1920's, when the Klan fires still smoldered in many sections. Nominal membership in a conventional religious organization—the Methodist, Baptist, Congregational, or Episcopalian churches—is frequently regarded as beneficial, although persistent activity does not seem to be expected. Married men probably have an advantage over bachelors or widowers—at least Presidents Cleveland and Wilson found it desirable to marry while occupants of the White House.

There was a good deal of sentiment in the convention of 1787 in favor of a presidential term of seven years with a bar against reelection —as a matter of fact, such a provision was included in an earlier draft of the Constitution. Finally, it was decided to provide a four-year term and to permit reelection. Nothing was said as to how many terms a single incumbent might be allowed, but Washington and Jefferson established a precedent of limiting the terms to two. Several Presidents during the succeeding century and a half felt that conditions justified breaking the two-term tradition in their own case, and U. S. Grant and Theodore Roosevelt took practical steps to let down custom's bars. However, it remained for Franklin D. Roosevelt to demonstrate that the two-term tradition, which many citizens supposed was as firmly rooted in the political system of the United States as the Constitution itself, could under circumstances of national emergency and world chaos be ignored.

In 1912 the Democrats included in their platform a plank which advocated a constitutional amendment prohibiting reelection. The following year the Senate actually adopted a resolution which called for an amendment extending the term of Presidents to six years and forbidding reelection. However, the House of Representatives failed to concur, although its committee on judiciary made a favorable recommendation. Several years later William Howard Taft proposed a similar modification in his *Our Chief Magistrate and His Powers*,² but other

**Proposals
to Limit the
Incum-
bency of a
Single
President**

¹ See his *Up to Now*, The Viking Press, New York, 1929, p. 412.

² Columbia University Press, New York, 1916, p. 4.

more pressing matters claimed the public attention—World War I, a paralyzing depression, and so forth,—so that nothing came of what had seemed in the years immediately following 1912 a not only meritorious but a promising movement. When 1940 approached and it appeared that President Franklin D. Roosevelt would at least accept a third term, even if he did not actively seek it, the popular interest arose again and a number of speakers and writers displayed the most intense feeling on the matter. Nevertheless, despite all of the predictions made even by those who were closely in touch with popular psychology, the third-term issue did not assume the anticipated major proportions in the 1940 campaign. Following the third election of Franklin D. Roosevelt the proposal was revived in the Senate to amend the Constitution in such a way that a single six-year term would be prescribed for a President, but the international situation absorbed the attention of the people, with the result that the third-term issue seems likely to be postponed for future consideration.

The office of President carries with it a salary of \$75,000 per year and enough allowances to bring the total amount to more than \$300,000. The salary is regarded as a personal item and may be spent by the President as he pleases. The allowances for White House maintenance, entertainment, clerical hire, travel, and miscellaneous are, however, limited to those purposes, with the result that any balances at the end of a fiscal year revert to the Treasury, not to the pocket of the President himself. In addition, the chief executive and his family are given the White House as a residence and may make use of naval vessels for cruising purposes, official visits, and even fishing. To set a value on these privileges in order to compare fairly the income of a President with those of corporation officials and owners of private business is an almost impossible task. For instance, the latter do not visit tropical waters on vessels that are even comparable in value and upkeep expense to ships of the United States Navy. However, even if the various allowances and perquisites should be valued at \$700,000 or \$800,000, the President receives less than several foreign chiefs of state and has at his disposal much less than the wealthiest industrialists of the United States. Great Britain ordinarily allows her king annually the equivalent of more than \$2,000,000, while the "Son of Heaven," the Emperor of Japan, receives from the State what is in American terms more than

\$1,000,000 as well as the income from one of the largest fortunes in the world.¹

There is some difference of opinion as to how adequate the presidential salary and allowances are. Advocates of thrift and simplicity do not see why it is necessary to devote such large amounts to this purpose; indeed they do not admit that the President is at all justified in using naval vessels for relaxation. **Adequacy of Remuneration** On the reverse side, others, more interested in social prestige than expense, point to the limited facilities of the White House in comparison with even one of the some eight palaces and castles of the English king, to the rather shabby furnishings of certain rooms in the White House, and to the far from regal entertainments that have usually been given by Presidents. Few chief executives find it possible to save anything from their salaries—although Calvin Coolidge was a notable exception; but on the other hand it is not known that many have had to dip into private resources deeply or incur debt.

The courts have ruled that the President is, except in the case of impeachment, immune from actions directed against him by other branches of the government. He cannot, therefore, be **Immunities** required to appear in court as a defendant or a witness, although he may consent to serve in the latter capacity. Writs of mandamus or injunction which name him cannot be issued by the courts.² Contempt-of-court charges are never aimed at the chief executive. Even in criminal cases it would be out of the question to haul him before other than an impeachment court, for being the wielder of the pardon power no punishment inflicted by a court would stand against his wishes.³ President Jefferson was summoned by the United States Circuit Court at Richmond to appear in the Aaron Burr treason trial, but he refused on the ground that to accept such a summons would be tantamount to admitting the dependence of the executive on the judicial branch.

Great honor is attached to the office of President. He is accorded military salutes when he reviews the land or sea forces and a salvo of **Social Status** guns when he enters a foreign port. Wherever he goes he is welcomed by crowds of people and officially received by

¹ On the income of the English king, see F. A. Ogg, *English Government and Politics*, rev. ed., The Macmillan Company, New York, 1936, p. 105; on the income of the Japanese emperor, see John Gunther, *Inside Asia*, Harper & Brothers, New York, 1938, p. 15.

² See *Mississippi v. Johnson*, 4 Wallace 475 (1867).

³ See *Kendall v. United States*, 12 Peters 524 (1838).

state and local representatives. Likewise, it is a very ceremonious occasion when he delivers a message to Congress in person. If perchance wants to speak to his fellow citizens in a fireside radio chat, the national chains will go to great trouble to clear time for him, irrespective of how much havoc is wrought with regular programs. Nevertheless, the President does not appear at ordinary social functions outside of the White House, for a tradition has long existed that the President is not the leader of society in the national capital but is rather above society. So the President entertains the Supreme Court justices, the members of his cabinet, and the diplomatic corps at dinners each year and receives the Senators and Representatives at state receptions, but except in the case of his cabinet members he does not accept return invitations. Considering the commanding position which the royal family occupies in British social life, it may appear strange that the President should hold himself aloof. But the President, unlike the king, has heavy responsibilities in connection with the day-to-day operation of the government; and if he had to assume in addition an elaborate round of social engagements, his existence might well become intolerable. The Vice-President substitutes for the chief executive as the social leader of Washington and spends his time in an endless succession of dinners, receptions, and other social occasions—unless he happens to be a “Cactus Jack” Garner who “can’t be bothered with such stupid things as social affairs.”

THE VICE-PRESIDENCY

The framers of the Constitution were not too enthusiastic about providing for a Vice-President and, had they authorized Congress to choose the President, they might have omitted the vice-presidency. Benjamin Franklin took the position so lightly that he proposed to have its holder addressed as “His Superfluous Highness.” Under the scheme finally accepted for selecting a chief executive it was essential that someone be designated to act for the President in cases of death or disability. So the office of Vice-President was created, with qualifications similar to those laid down for the chief executive.¹

Inasmuch as it was thought desirable to give the Vice-President something to do besides awaiting the death or incapacity of his chief, the framers ordained that he should preside over the sessions of the Sen-

¹ See the Constitution, Art. II, sec. 1.

ate. The Senate has its own president pro tempore who takes the chair when necessary and hence the Vice-President is not absolutely essential to the functioning of that body. Nevertheless, most Vice-

Duties

Presidents take their duties in this connection quite seriously—in some instances a little too seriously to suit the Senators who feel very able to run their own business.¹ Especially if the Senate is disposed to split into factions or to balk at working with the President, a tactful yet strong Vice-President, whom the Senators respect, may serve a very useful purpose.² It has already been pointed out that the Vice-President and his wife are the social leaders of Washington.³ Needless to say, this in itself is more or less of a full-time job. Vice-Presidents may or may not be invited by the chief executive to sit with the cabinet.⁴

Six Presidents have died during their terms and their Vice-Presidents have taken over the office. The Constitution does not state

Succession to the Presidency

that a Vice-President in such an event shall assume the Presidency—it merely orders that the duties of the chief executive “shall devolve upon the Vice-President.”⁵

Actually every one of the six whom death has permitted to climb out of a certain obscurity into the floodlighted office of President has taken the title “President” and for all practical purposes not differentiated himself from regularly elected holders of the office. No case of impeachment has made a vacancy for a Vice-President; nor has there thus far been a case in which “the inability to discharge the powers and duties” on the part of the chief executive has eventuated in the moving up of the Vice-President. Since no machinery is provided to determine under what circumstances a President may be considered unable to discharge his duties and since both seriously ill Presidents and their families are extremely reluctant to surrender authority, there has been not even temporary promotion of the Vice-President although that has at times seemed desirable. President Wilson during his second term was out of touch with even the most important affairs of the government; yet he did not make any move

¹ Vice-President Dawes may be cited as an example when he sought to change the Senate rules.

² Vice-President Garner was generally credited with exercising great influence.

³ Vice-President Curtis had no wife and was responsible for the dispute between Mrs. Gann, his hostess, and Mrs. Longworth, wife of the Speaker, as to precedence.

⁴ Vice-President Coolidge was the first twentieth-century Vice-President to sit with the cabinet, though John Adams really started the precedent.

⁵ Art. II, sec. 1.

to permit the Vice-President to assume responsibility. In the case of state governors mere absence from the confines of the state may automatically confer the power upon the lieutenant governor to act as governor, but the absences of Presidents Wilson and Franklin D. Roosevelt from the United States indicate that there is no corresponding practice in the national government.¹

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¹ See Corwin, *op. cit.*, pp. 333-339.

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CHAPTER XIV

THE POWERS AND DUTIES OF THE PRESIDENT

THE developments which were noted in the preceding chapter have, of course, added in large measure to the powers and duties of the chief executive. From an official whom John Adams believed should be primarily a mediator between the aristocrats and the poverty-stricken or whom George Washington regarded as a sort of limited monarch designated for a given term, the President has become the center around which the entire government turns. He is so constantly in the public eye that he finds it difficult to retain any private life at all—even when he desires to stroll or motor for relaxation he is invariably accompanied by secret service operatives. Indeed, in the minds of large numbers of citizens he has become literally the symbol for the whole gigantic structure of the Federal government.

The first Presidents had no need for elaborate office organizations; a handful of secretaries and clerks could easily care for the correspondence and business which had to be handled. As the office has become more commanding, its routine as well as its important duties have expanded until an elaborate organization is required. The early Presidents could find office space for themselves and their secretaries within the confines of the White House itself, but the more recent incumbents would be aghast at the very idea of working with such simple facilities. The space to the west of the White House has been given over to the site of executive offices, which have been added to again and again; even so, they cannot accommodate the numerous staff which has been recruited by the President to assist him in performing his official duties. Some of the immediate entourage have taken over space in the adjacent State and War building, while the Bureau of the Budget, the National Resources Planning Board, and other sections of the office of the President are scattered all over Washington. More than a hundred secretaries, clerks, stenographers, and guards are now required to handle the immediate duties connected with the presidential office, while budget drafting, national planning, reporting, and other functions, which

The
Executive
Offices

have been placed under the direct supervision of the President, necessitate the employment of numerous experts of one kind and another. The work of these latter agencies will be discussed in connection with subsequent chapters dealing with national finance, conservation, and planning;¹ it remains here to consider the general operations of the executive office.

An enormous amount of routine work must be performed by the secretaries of the President. Mail is so heavy that it has to be delivered by post-office trucks. All of it, whether it comes from fools, **Routine Duties** serious-minded but deluded citizens, men of affairs, or politicians, is examined with some care and sorted out into piles for attention. The general policy of Franklin D. Roosevelt has been to accord at least some attention to virtually all letters which are addressed to him—indeed he has invited people in his fireside chats to write him about their difficulties, especially if their troubles have involved relief administration. Many of the communications can be acknowledged by sending out form letters; others are handled by the assistants to the personal secretary. The more important receive the attention of the personal secretary himself or one of the secretaries charged with appointments, public relations, and reports. Only the most important come to the desk of the President himself. But altogether the number of outgoing letters is vast.

Large numbers of interested citizens feel so close to the President that they want to share with him their wild game, fruit, handwork, artistic efforts, and almost every other conceivable possession. The task of receiving the parcel post and express packages that pour in, examining them to see that they contain no bombs, poisons, and other dangerous objects, deciding what shall be done with cherry pies six feet across, fancy turkeys, and laboriously executed fancy work, is no mean one. Some of the food products can be used in the White House kitchens; ship models may find a place among the collection which is a hobby of the present incumbent; other items may be sent to various eleemosynary institutions located in Washington. But they all demand the attention of someone and receive the official thanks of the executive office.

One of the principal secretaries of the President manages public relations.² He goes over with the chief executive statements which

¹ See Chaps. 26 and 32.

² It may be noted that only since the Roosevelt administration has the public-relations

are to be given to the press and distributes these statements to representatives of the Associated, United, and other press services as well as those large newspapers, such as the *New York Times*, which keep full-time employees stationed in the **Public Relations** press room of the executive offices. If the newspapers have any special request to make of the President, negotiations are conducted through this intermediary. Twice each week when the chief executive is in Washington and not incapacitated by illness, the public-relations secretary arranges a press conference, attended by a hundred or more home and foreign newsmen.¹ Any newspaper or press service which is duly accredited by the Senate or House of Representatives may send a reporter to a presidential press conference, but weekly and monthly periodicals, radio chains, syndicated columns, and related enterprises are not permitted that privilege.² On such occasions the President ordinarily receives the newspapermen in his private office, permits them to surge around him more or less informally, and replies to such questions as he feels it desirable to answer. Franklin D. Roosevelt apparently thoroughly enjoys most of these sessions with the press, despite the critical attitude which he has displayed toward newspaper owners. He jokes with the reporters, jibes at some of their new stories, brands some of the questions as "lousy," and parries pertinent queries which he does not want to throw out yet which require careful handling. Not infrequently he will take them into his confidence and tell them the inside facts, stipulating that these stories shall not be used.³

secretary been so important. Part of Mr. Hoover's unpopularity has frequently been attributed to the fact that he had no organized method of meeting with the press. F. D. Roosevelt, quite aware of that shortcoming, has maintained a system whereby not only he is accessible to reporters at stated periods, but also that his press secretary is always available. The President has also encouraged his cabinet members and other high administrative officials to hold frequent press conferences. It is said that Mr. Roosevelt believes friendly and open relations with the "fourth estate," besides being an essential to political success, are an essential to democracy. The people must know what is in the administrative and executive as well as the legislative mind. Much of Mr. Roosevelt's phenomenal success in cultivating such press relations is due to his press secretary, Stephen Early. For a short, but informing sketch of Mr. Early and the White House press relations, see Delbert Clark, "'Steve' Takes Care of It," *New York Times*, July 27, 1941.

¹ In 1942 weekly press conferences were scheduled for Tuesday at 4 P.M. and Friday at 10:30 A.M. Conferences last anywhere from 5 or 10 minutes to an hour. As many as 200 reporters may attend. Questions and answers are "the life of the meeting." See "The Best Show in Washington," *New York Times*, February 1, 1942, for a current description.

² The press galleries of the Senate and House are limited in space. Hence, to avoid crowding yet to meet the most legitimate demands, only daily newspapers are allowed representatives there. That basis for discrimination is carried over to the presidential conferences which are likewise held in a comparatively small room.

³ It may be added that some representatives of the press resent this technique. They

Another principal secretary receives the requests of those persons who feel that they are entitled to discuss a matter personally with the

Callers President. When the demands on the chief executive were less arduous, it was not especially difficult to obtain a personal interview—indeed there was long a tradition that the President should on stated occasions receive and shake hands with all who could produce congressional cards. During the last decade there has been a more or less complete shift of policy. No longer do Presidents torture themselves by shaking hands with long lines of those who want to boast that they have been personally greeted by the highest officer of the United States.¹ Nor is it in this latter day easy for committees of civic organizations to secure interviews in order to urge their claims. Even politicians now find that the President is often beyond their reach, at least as far as a personal conversation is concerned. Curiously enough, Franklin D. Roosevelt has sought to cultivate the rank and file of American people through radio broadcasts and messages to the press as no other President has done, and at the same time he has removed the office from personal contact far more than would have been dreamed of a few years ago. His predecessors often complained about the hardship of endless handshaking and receiving all sorts of delegations, but they feared to brook tradition. Mr. Roosevelt has taken the step which, while perhaps not ideal under the principles of pure democracy, should have been taken years ago. When a President has many matters of the first magnitude to occupy his attention, it is absurd to expect him to devote large amounts of energy to more or less meaningless personal interviews. It may be that the remarkable ability which Mr. Roosevelt has shown in keeping himself fit during times more trying than any President has yet encountered may be due, at least in part, to the new policy of holding himself aloof from trivial matters.

One of the 1937 proposals for administrative reorganization was that half a dozen general assistants should be furnished the chief executive to relieve him of some of his heavy burden. The **The Little Presidents** representatives of the press immediately became fascinated with the news value of the scheme and blared forth to the world that

are pledged at the pain of future exclusion not to make use of the material; yet they feel that the public is entitled to know the situation.

¹ Hours of handshaking results in severe pain in the case of most human beings. When Presidents were obliged to go through this ordeal, their hands were sometimes more or less incapacitated for several days thereafter.

"six little Presidents, with a passion for anonymity" were being contemplated. Despite the defeat of the general reorganization bill in Congress, this feature was authorized in the emasculated bill which finally became law in 1939. It is probable that most citizens do not even know the names of the "little Presidents," for they do not, as a rule, receive a great deal of publicity.¹ Nevertheless, they seem to occupy a very significant position in the machinery which makes it possible for the executive office to function throughout times of stress and difficulty. One of these assistants devotes himself to personnel problems, not only in so far as appointive offices are involved, but also to the integration of the Civil Service Commission with the departments which perform the daily work of government. Another attempts to coordinate the numerous defense activities of the government in order to give the President an over-all view of what is going on. Still another has charge of coordinating all government publications and publicity, possibly in order to bring up the standard of readability and interest in reports which once had the reputation of being the dullest possible reading. This job is an outgrowth of the remarkable expansion of the function of press secretary during the Roosevelt administration. Finally, another has had the responsibility of serving as go-between for the President and Congress. The assistants serve more or less as liaison agents between the President and the various service departments of the government. They enjoy only what authority is conferred on them by their chief—which seems to be rather extensive as far as routine matters go;² they make regular reports to him about what is being done in large sections of the government; and they possibly advise him about what changes should be made to accomplish desired ends. The chief executive has long had the responsibility of overseeing the administrative departments, but the recent overwhelming complexity of the system has made it extremely difficult to keep a firm hand on the helm. The "little Presidents" serve a useful purpose in minimizing the difficulty.³

¹ Wayne Coy, the assistant in charge of national defense activities, may be cited as an exception. At any rate his name has appeared in the press fairly often.

² William McReynolds, the assistant in charge of personnel, described in some detail his duties to a small group of students of government which met in his office in 1940. His statement was that the President had given him considerable leeway in routine matters.

³ Sometimes the assistants and secretaries, especially personal secretaries, have great influence and are particularly intimate with their chief. Louis McHenry Howe, secretary to Franklin D. Roosevelt, and Joseph P. Tumulty, secretary to Woodrow Wilson, are supposed to have been close confidantes on whom the Presidents relied very greatly.

A reading of the Constitution will convey some idea of what a modern President is expected to do, but it will by no means reveal the details. In other words, the Constitution laid down the general powers which the President might exercise,¹ leaving the details to be worked out subsequently. A great deal of the responsibility which now rests on the shoulders of the chief executive may be traced to laws which Congress has from time to time enacted. Under these the President is authorized to make important appointments, to determine policies which may have far-reaching effect, and to issue orders which for all practical purposes have the force of laws. The Supreme Court has defined presidential powers in a number of its cases by ruling that certain acts of a holder of the office were proper,² by declaring other acts without legal foundation and hence invalid,³ and by refusing to take jurisdiction on the ground that political questions belonging to the sphere of the President or Congress were presented.⁴ Finally, custom and usage have associated certain duties with the office—for example that an egg-rolling contest shall be put on in the grounds of the White House the Monday after Easter, with free admission to all persons who can produce a youngster as an escort. It may be added that not all of the accretion of custom is as colorful yet inconsequential as this. The holding of cabinet meetings may be cited as an example of a more serious duty imposed by tradition.

Before passing to a discussion of some of the specific powers which the President now exercises, it is advisable to attempt a general classification in order that some idea of the powers in their entirety may be gained. Professor Ogg notes three broad subdivisions: (1) those chiefly or exclusively executive in character, (2) those arising out of the legislative process, and (3) those which stem from the position of the President as party leader.⁵ Other classifications have been made, but this one seems logical enough except that the phrase "national leader" might

A Classification of Presidential Powers

¹ Art. II, secs. 2 and 3.

² See, for example, the case of *Myers v. United States*, 272 U. S. 52 (1926), which upholds the power of the President to remove from office.

³ See, for example, the case of *Humphrey's Executor (Rathbun) v. United States*, 295 U. S. 602 (1935), which limits the removal power in certain cases.

⁴ See, for example, *Luther v. Borden*, 7 Howard 1 (1849).

⁵ See Frederic A. Ogg and P. O. Ray, *Introduction to American Government*, rev. ed., D. Appleton-Century Company, Inc., New York, 1938, p. 248.

be substituted for "party leader."¹ The first of these categories is so broad that it requires breaking down itself. Among the executive functions may be mentioned the following: (1) supervision over the administrative agencies of the Federal government, (2) enforcement of the laws of the United States, including the general maintenance of order, (3) appointment and removal of federal officials, both civil and military, (4) granting of pardons, reprieves, and amnesties, (5) oversight of the conduct of foreign relations, and (6) acting as commander-in-chief of the armed forces of the United States and as coordinator of national defense efforts. Of the three general divisions, two will be examined in this chapter, while the legislative functions will be mainly reserved for a later chapter.

SUPERVISION OVER THE ADMINISTRATIVE AGENCIES

While the tasks of the legislative and judicial branches of government have, of course, grown heavier during recent years, it is in the administrative field that the greatest elaboration of function has taken place. From a comparatively simple system with a handful of departments and a few hundred employees we had moved to a position by 1937 where we found ourselves with over one hundred separate administrative agencies manned by almost one million public employees. Since that time there has been some reduction in the number of agencies, but the number of persons on the pay roll has now reached an all-time high of more than 1,500,000. It is obvious that such a Gargantuan setup cannot of itself be particularly cohesive and that unless some provision is made for coordinating its efforts there will be not only waste and duplication but distinctive inefficiency. The framers of the Constitution did not in their wildest dreams foresee such an administrative system as is now operative in the United States. Indeed so little did they envision a complex administrative machinery of any character that they made little or no direct provision for its structure or supervision. Congress has assumed the power of deciding the structure and extent of the authority of the administrative de-

¹ The President is, of course, ordinarily more or less of a party leader. The mere fact that he is selected by the national convention as presidential nominee gives him a certain standing among the men who control the party. Some Presidents have worked closely with the party organization and may be fairly considered party leaders. Others after election find party demands irritating and consequently tend to break away from intimate party relations. But increasingly the President has assumed a position as national leader. The people look to him for guidance on almost every aspect of life.

partments, although at times it has granted to the chief executive limited right to reconstruct and even assign tasks. Under the constitutional stipulation that he shall generally exercise the appointing power, and faithfully execute the laws,¹ under the permission to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,"² and under the judicial ruling that he shall be permitted to exercise the removal power except in a few duly specified cases,³ the President has claimed the right to supervise administration.

Although it has long been agreed that the chief executive should supervise the administrative agencies, his actual exercise of that duty has not been outstandingly vigorous. Presidents even before the present generation have been busy men, with all sorts of demands on their time and energy. Any far-reaching supervision of federal administration requires much more than merely a passive desire on the part of a President to coordinate. Moreover, it necessitates some integrated system of organization and at least certain machinery within the executive office itself. Presidents have ordinarily had neither the time nor the active desire to supervise the conduct of administrative affairs in more than a general or even casual fashion. Occasionally a well-publicized incident has demanded that they assert their authority, and they have made a great to-do about settling the difficulty. While they have for the most part had a vague sense of obligation, they have permitted the pressure of their other work and the lack of any adequate machinery of control to block effective action. The fondness of Congress for adding commission to commission without any attempt to integrate them into a workable system has, of course, made even the endeavors of exceptionally ambitious Presidents more or less impotent. Even in the case of the ten great departments which are reasonably well integrated with the executive office through their heads, the President has not always found it easy to demand adherence to certain standards and policies. For example, it is well known that the army and naval officers who constitute the ranking officials of the War and Navy departments below the political, civilian secre-

Actual Exercise of Supervision

¹ See Art. II, sec. 2.

² Art. II, sec. 2.

³ See *Myers v. United States*, 272 U. S. 52 (1926); and *Humphrey's Executor (Rathbun) v. United States*, 295 U. S. 602 (1935).

taries have sometimes blocked presidential desires in large measure—they have, of course, never refused outright to carry out the instructions of the President, but somehow or other little or nothing in the way of results is forthcoming. If it is difficult to bring the regular departments into line, it is a much more Herculean task to achieve any large measure of control over the independent establishments which litter the national capital. The mere number of these is enough to make a central controlling agency dizzy, while to keep an eagle eye on their operations would require superhuman endowments.

The reorganization bill which the President sent to Congress in 1938 was aimed at bringing the administrative setup into a more integrated relationship with the executive office.¹ At an earlier date President Hoover had sought a similar change. The attempts of both Presidents were effectively defeated, however, by a combination of the efforts of the entrenched forces of bureaucracy to remain without control, the reluctance of Congress to augment the power of the President, and the clamor of demagogues to seduce the people with the idea that reorganization would mean the abandonment of democratic government. The independent establishments continued to be independent and were blessed in their policies which frequently were at cross-purposes and which sometimes ignored essentials of the best interests of the public. Nevertheless, something was saved from the debacle. The "little Presidents" already noted were authorized and have served a very useful purpose in bringing about a reasonable measure of coordination when backed by a vigorous chief executive. The transfer of some of the bureaus to more logical departments and the combination of those of similar function has also been helpful. Nevertheless, the administrative machinery remains so elaborate and so lacking in cohesiveness that adequate supervision is exceedingly difficult.

The broad structure and powers of administrative departments are outlined in congressional enactments, but there are numerous details which can scarcely be provided for by law. Even if Congress saw fit to spend the time necessary to specify every minute subdivision and regulation it is probable that there would be lacunae which only time and experience would indicate. It has increasingly been the practice to leave the details of organization and operation to be filled in by executive orders. These are ordinarily

Recent
Efforts to
Achieve
Central
Control

Executive
Orders

¹ This bill is discussed in more detail in Chap. 23.

prepared by experts in the department concerned, submitted to the administrative head, and promulgated either by him or by the President. Thus it is apparent that executive orders originate for the most part and embody the ideas of staff members of a foreign service, a patent office, or a bureau of internal revenue. Nevertheless, if they are promulgated in the name of the President, there is a certain measure of responsibility incident thereto. Moreover, the President may be sufficiently interested and informed to submit the proposed executive orders to his advisers who will recommend changes to be incorporated before the orders are actually put into force. With as adequate a staff as President Roosevelt has, the initiative in certain cases may even be taken by the executive officer rather than by an agency.

Although President Hoover had made more use of this device than his predecessors—it was predicted by students that another twenty-five years might see executive orders as commonplace in the United States as in England—it remained for Franklin D. Roosevelt to break all records. Within a very short time after his inauguration he had prevailed upon Congress to delegate large powers to him and thus started an era of executive orders in place of laws. That is not to say that Congress ceased passing laws, for a considerable number of important acts found their way onto the statute books. But almost all of these laws originated in the executive office, were “steam-rolled” through Congress without change or much opportunity for debate, and contained only the most general provisions.

The National Industrial Recovery Act marked a climax by permitting the President and his representatives to make almost any rules and regulations relating to business and its conduct that they liked. N.R.A. was shortly set up and began to grind out codes so rapidly that not even the government officials themselves could keep up with what was being done. When N.I.R.A. came to the Supreme Court for a hearing, the justices requested copies of the executive orders issued under it; but chaos was so prevalent that the executive offices had to admit that they did not know where a complete set could be obtained. This state of affairs scandalized even the most liberal members of the court.¹ Even those justices who might perhaps have been in agreement with the general

The Record of Franklin D. Roosevelt

N.I.R.A. and Executive Orders

¹ Justice Cardozo, for example, prepared one of the most striking concurring opinions ever written, in which he severely criticized such disorder.

purpose of the law, could not approve a method which provided an elaborate set of administrative regulations carrying severe penalties for infraction, yet which was so sprawling and unorganized that government experts themselves were not familiar with contents.¹ Hence the Supreme Court unanimously declared N.I.R.A. in conflict with the Constitution and consequently null and void.²

The fate of N.I.R.A. threw a damper on the use of executive orders, but their role soon became very prominent again. Congress patched up most of the acts thrown out by the Supreme Court, laying down more definite boundaries within which these orders might operate, but still permitting them a very generous scope.³ The changed attitude of the Supreme Court has also encouraged the use of executive orders. The program of national defense has witnessed almost if not quite as general an employment of this device as the depression drive of 1933-1935. What the future may bring, it is, of course, difficult to say. The war powers of the President are very extensive and necessarily permit greater leeway in the use of executive orders than would ordinary times. Nevertheless, there is abundant evidence that they will be widely issued, even after the emergency is over.⁴

Present
Status of
Executive
Orders

ENFORCEMENT OF THE LAWS

The Constitution commands the chief executive to "take care that the laws be faithfully executed";⁵ and, as if fearing that a mere command, however plainly stated, would not suffice, it also prescribes that he swear when taking office that he will "protect and defend the

¹ This was not the sole reason given by the Supreme Court for refusing to uphold the validity of N.I.R.A. Even more important was the fact that the Court did not consider the regulation of ordinary business to come within the scope of the power of Congress to regulate interstate commerce.

² In *Schechter v. United States*, 295 U. S. 495 (1935).

³ In 1936 the realization of the need for a publication and record of executive and administrative orders led to the establishment of the *Federal Register*. It is a daily compilation of presidential proclamations such as of Thanksgiving Day or of a national emergency; executive orders, proclamations, notices of hearings, and rules issued by administrative departments or agencies; and orders and decisions of departments or quasi-judicial agencies. Naturally it solves the problem which the Supreme Court found so scandalous in the *Schechter* case. Also, like the *Congressional Record*, the *Statutes-at-Large*, and the *United States Reports* in the other two branches of government, the *Federal Register* provides a permanent record of executive activity.

⁴ The most elaborate study of executive orders is James Hart, *The Ordinance-Making Powers of the President of the United States*, The Johns Hopkins Press, Baltimore, 1925. It was made before the notable expansion referred to above.

⁵ Art. II, sec. 3.

Constitution of the United States,"¹ which lays down the order. On the basis of such emphasis it might be supposed that the President has a very active part in law enforcement. Actually this particular duty occasions a President some worry at times, but it does not occupy any major portion of his attention. The responsibility for enforcing the laws of the United States rests primarily upon the Department of Justice, the federal district attorneys, the United States marshals, and the federal courts. If the President is informed that a federal official is intentionally violating a law, especially if moral turpitude is involved, removal proceedings may be instituted. If disregard for law is flagrant, public attention may generate unpleasant heat which in turn may lead the President to reprimand the Department of Justice or to ask for the resignation of a federal district attorney or marshal.

In dealing with the responsibilities which the national government owes to the states² we pointed out that internal disorders are to be the occasion of federal intervention if the states desire that assistance. These requests are lodged with the President either by a state legislature or by the state governor if the legislature is not in session. It is then obligatory on the chief executive to send in federal military or police forces, although there is no way to compel him to act unless he sees fit. Presidents actually do heed these pleas for aid and may even find an excuse to intervene when a state refuses to ask for help.³

THE POWER OF APPOINTMENT AND REMOVAL

The Constitution states that the President "by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established

¹ Art. II, sec. 1.

² See Chap. 3.

³ Examples of such intervention are not common, but they have sometimes been widely publicized. Sending in troops by President Cleveland, over the protest of Governor Altgeld, in order to protect the mails during the Pullman strike in Illinois was big news. Much public interest was also aroused by sending federal troops to take over the plant of the North American Airplane Corporation in 1941 when strikers refused to heed the repeated appeals of the President. See Allan Nevins, *Grover Cleveland; A Study in Courage*, Dodd, Mead & Company, Inc., New York, 1932; W. R. Browne, *Altgeld of Illinois*, The Viking Press, New York, 1924; and for the President's own interpretation, Grover Cleveland, *Government in the Chicago Strike of 1894*, Princeton University Press, Princeton, N. J., 1913. Cleveland's action was completely upheld in *In re Debs*, 158 U. S. 564 (1895).

by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of the departments.”¹ It is evident from this clause that the power to appoint is at least nominally quite extensive, although it is qualified by the stipulation that major appointments must receive the approval of the Senate and minor positions may be removed from the presidential area altogether. The Constitution has little to say about the removal power, beyond specifying that judges shall hold office during their good behavior, but the courts have held that the removal power is implied in the appointment grant and that consequently the President has very wide leeway in that field.²

Federal appointments have traditionally been listed under two categories: (1) major positions which require the consent of the Senate, and (2) “inferior” jobs which are now for the most part filled under the rules and regulations of the merit system. This classification may, however, not be deemed satisfactory by students of public personnel administration. Actually some of the so-called “major” places are in reality distinctly less important than certain of the “inferior” jobs, at least on any basis more substantial than political activity. For example, the collectors of internal revenue, the federal marshals, and the first-, second-, and third-class postmasters all fall under the first category, although their work is for the most part routine. On the other hand, the principal permanent administrative officers in Washington, the bureau chiefs, and technicians are for the most part placed under the second class, despite the fact that their responsibilities are far greater and even their compensation exceeds that of many members of the former category. But, no matter how lacking this breakdown may be, it is important in assessing the appointing power of the President. The approximately fifteen thousand holders³ of the so-called “major” positions in the civil departments as well as the several times that number of army and naval officers all look to the chief executive and the Senate for their appointments. The more than a million remaining civil employees in about eight cases out of ten fall under the merit

A Classification
of
Federal
Positions

¹ Art. II, sec. 2.

² See *Myers v. United States*, 272 U. S. 52 (1926).

³ For a vivid description of trouble the appointing power caused Lincoln, see Carl Sandburg, *Abraham Lincoln, the War Years*, 4 vols., Harcourt, Brace and Company, New York, 1939, Vol. I.

system, while the rest are chosen by the departments or the courts under personnel practices which they ordain.

During earlier periods of our national existence Presidents have found the use of the appointing power to be a great drain on their time and energy. Numerous office seekers have attempted to see the President in person to plead for consideration. The number of positions has rarely, if ever, been anything like large enough to satisfy all the demands, with the result that many applicants have been disappointed. When one of these sought revenge by assassinating President Garfield, the attention of the country was focused on the evils attendant upon the system and led to the creation of a Civil Service Commission charged with preparing lists of those properly qualified for various public positions. Although politicians have never viewed the merit plan with any particular enthusiasm, they have deemed it prudent to yield to various pressures and little by little have transferred public employment to a career basis. Something like 20 per cent of the civil positions still remain outside of the jurisdiction of the Civil Service Commission and may be used to reward faithful members of the majority party. The rank and file of these places are filled by the departments and commissions themselves, but the President keeps at least a slight measure of control through his assistant who coordinates the problems of government personnel.

It is commonly assumed that the fifteen thousand or so places that require presidential nomination and senatorial confirmation still are personally handled by the chief executive himself. As a matter of fact, very few of these appointments are in any sense personal ones. The several thousand postmasterships are filled by the Senators and Representatives of the majority party after the Civil Service Commission has given a simple examination. The numerous collectors of customs, collectors of internal revenue, federal district attorneys, and United States marshals are so far removed from the presidential path that they receive only cursory attention from the chief executive himself. Senators belonging to his party decide among the various claimants in their state; and, if their decisions are not so inferior that the Justice and Treasury departments interpose a violent objection, their choices are then appointed. The judgeships in the federal courts may or may not be disposed of in the same fashion—most of the district judgeships have

Actual Exercise of the Appointing Power

Frequency of Personal Appointments

apparently gone recently to the favorites of prominent Democratic politicians, although the President has personally filled the Supreme Court vacancies together with some of the circuit court positions. Ambassadors and ministers, too, are often actually appointed not by the President but by some powerful politician, despite the fact that the former must send in the formal nomination to the Senate. Secretaries of the ten ranking departments are likely to be the personal choices of the President after he has given due consideration to the recommendations of political associates, while other high administrative posts may or may not receive much attention.

"Senatorial courtesy" supposedly stipulates that the chief executive shall consult Senators of his own party before sending in nominations for officials in their respective states. Actually, as former **Role of the Senators** Senator Pepper of Pennsylvania has pointed out,¹ the role of the Senators is far more prominent than a statement of this custom would indicate on its face. Ordinarily the Senators do not wait to be consulted—they keep their eyes on possible vacancies and then proceed to send letters or messages to the President² requesting that certain of their followers be nominated to the positions. The President may attempt to investigate the qualifications of these persons, but in many instances he is too busy to do more than act as a "rubber stamp." Of course, the Senators of a state may disagree as to who should be the next district judge or collector of internal revenue, or there may be no Senator from the President's party in office. In these cases the President may wait until the Senators immediately concerned have reached an agreement³ or he may decide to accept the recommendations of other persons, particularly party leaders in the state. In general, except in the case of a small number of outstanding positions, the appointing power of the President seems to have become rather routine. The very fact that he has to make the nomination in the last analysis confers on his person much political influence, but

¹ See George Wharton Pepper, *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930.

² Letters are not as frequently used as in the past. The liaison representative whom the President maintains in Congress talks to Senators and Representatives about their desires and carries messages to the executive office pertaining to appointments that require attention. Of course this applies only to members of the President's own party, particularly to those who follow presidential desires.

³ At times a President may wait two or three years. Two vacancies on the Circuit Court of Appeals at Chicago remained unfilled for well over a year because of disagreement among politicians at a time when the President was castigating the courts for being behind in their work.

as far as the appointments themselves are concerned the presidential role is primarily that of an intermediary. ✓

The nominations which even a superior President sends to the Senate frequently leave a good deal to be desired. Penniless wrecks **Criticism of the System** who have squandered their means and health on liquor may be sent to minor diplomatic posts because they have powerful friends in politics.¹ Machine lawyers who have had no judicial experience and indeed have scarcely engaged in the practice of law at all are appointed federal district judges, despite the opposition of reputable members of the bar.² Collectors of internal revenue and of customs may be so incompetent and inexperienced that their work has to be performed by subordinates. It has long been a truism that first-class postmasters do little more than grace their offices and collect their salaries. Presidents have so much to do in other realms that they can scarcely be expected to give adequate attention to who is to be district judge in New Mexico, the collector of internal revenue at Atlanta, or the collector of customs at Seattle. Moreover, even if they had assistants who performed such a service for them, there would be the question of placating the Senators and politicians. Under our system of government, which was constructed under the theory of separation of power, the President has no adequate legal means of integrating his efforts with those of Congress, despite the obvious necessity of such collaboration. One of the chief avenues of control has been his appointing power, for Senators and Representatives are willing to follow his leadership for a price. If the collectors of internal revenue are put under civil service,³ the question is raised as to what the President can do to impress his leadership on Congress.⁴

¹ For further discussion of this problem, see Chap. 34.

² A number of such appointments have been made during the last decade, although some good appointments have also been made. President Roosevelt has been accused of more than usual carelessness in permitting inferior lawyers to take posts as district judges.

³ The original Ramspeck bill did include collectors and related functionaries, but amendments struck out the provision.

⁴ Professor E. S. Corwin in *The President: Office and Powers*, p. 290, argues that, since the President's major control of Congress stems from his position as popular leader, the loss of the patronage power would possibly work to his advantage rather than disadvantage. To destroy federal patronage would tend to turn the parties into "organs of opinion pure and simple, to the great advantage of the President as Party Leader." He quotes President Taft's famous epigram that by every appointment he made "nine enemies and one ingrate," and he concludes that "the anxiety of certain authorities to discover some mode of 'compensating' the President for the loss of patronage which a professional civil service would mean is misconceived." He adds in a footnote, however: "It is possible that I am a bit overconfident in my position."

Federal judges are specifically exempted from the removal power of the President, even in those instances in which they have clearly demonstrated their incompetence in the position. Only one method, that of impeachment, is set forth by the Constitution, to relieve the commonwealth of these burdens. **The Removal Power**

In the case of the other holders of federal positions no formal provision beyond the cumbersome impeachment process is made for removal and for almost a century and a half the question remained unsettled as to exactly what authority the President had. In general, it was the consensus of opinion that removals at times had to be made and that the President was the logical person to act.¹ Nevertheless, in 1867 Congress passed a law which specifically laid down the rule that removal from civil offices which had required the original confirmation of the Senate could be effected by the President only with the Senate's consent.

It was not until 1926 that the Supreme Court finally carefully examined the authority of the chief executive relating to removals and declared that it transcended the appointing power in that the consent of the Senate was not necessary.² But even this sweeping decision did not put an end to the controversy, although it did go far in that direction. In setting up certain offices Congress felt that a large measure of independence, even from the executive, was desirable and consequently specifically limited the right of the President to remove holders except in such circumstances that he would certify that there had been dishonesty or extreme incompetence in filling the office. One of these acts, relating to the federal trade commissioners, was challenged by Franklin D. Roosevelt, who maintained that all of the higher public servants should at least be in substantial agreement with the general policies of the chief executive. Acting on such a philosophy Mr. Roosevelt proceeded to ask for the resignation of Commissioner Humphrey, a holdover from the Hoover administration. Mr. Humphrey refused to resign, whereupon Mr. Roosevelt summarily removed him from office. Mr. Humphrey, asserting that he had been deprived of his position in direct

¹ As early as 1789 congressional opinion pointed in the direction of vesting such a power in the President. From time to time the question was debated and the bulk of the arguments favored presidential exercise of the removal power.

² See *Myers v. United States*, 272 U. S. 52 (1926). Justices McReynolds, Brandeis, and Holmes did not agree with the majority of the court. It is interesting to note that the majority opinion overthrowing the old statute and allocating full power of removal to the President's hands was written by the former President, Chief Justice Taft.

contravention of the law, asked for the continued payment of salary and prosecuted a claim for compensation in the courts.¹ In deciding this case the Supreme Court modified the earlier Myers decision by ruling that Congress had the authority to exempt certain offices which it feels are quasi-judicial or quasi-legislative in character from the full removal power of the President. Nevertheless, when Chairman Morgan of the T.V.A. challenged the authority of President Roosevelt to remove him from office, the Supreme Court refused to intervene on the ground that Congress had not plainly declared its intention of lifting T.V.A. directors out of the ordinary category.²

The fact that most of the federal employees are at present under the merit system and receive their appointments from others than the President makes them not subject to the general removal power of the chief executive, although definite machinery is provided for their separation from public jobs "for the good of the service." Numerous other officials³ hold their positions for definite terms, usually for four years, and this also relieves the President of considerable burden. If they continued indefinitely in federal employment, political pressure or lack of attainments would necessitate removal. As it is, even politicians can await the expiration of a comparatively short term, while the public can endure mediocre services. Hence it is only where no definite term is set up or in extreme cases of incompetence or corruption that the President makes use of his removal power. Ordinarily a mere request for a resignation will suffice in these instances, but if the incumbent displays stubbornness, the President has only to order removal, even to forcible dispossession by a federal marshal.

Actual Ex-
ercise of
the Re-
moval
Power

PARDONS, REPRIEVES, AND AMNESTIES

The framers followed the time-honored tradition of conferring the pardon power on the executive—the Constitution succinctly states that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."⁴ It has been held that this authority is very wide, except, of course, in so far as impeachment proceedings are involved. If he

¹ See *Humphrey's Executor (Rathbun) v. United States*, 295 U. S. 602 (1935).

² See *Morgan v. United States*, 304 U. S. 1 (1938).

³ Federal attorneys, marshals, collectors of internal revenue, and so forth.

⁴ Art. II, sec. 2.

chooses,¹ a chief executive can pardon an offense before the guilty person has been arrested, or he may free him from jail while he waits trial. Even after a trial has started, the President has the legal right to stop the proceedings by extending a pardon. After sentence has been pronounced, the accused may be pardoned immediately or during the period that he is serving a prison sentence. Finally, the legal guilt and blot of a prison record can be expunged at least in part by the issuing of a pardon after a convicted person has finished his prison term.² A reprieve may be granted which will delay the execution of a sentence. Or the President may decide to *commute* a sentence, substituting life imprisonment for the death penalty or reducing a prison sentence from twenty to ten years. In case of a civil war or general rebellion, the pardon power permits the President to grant an amnesty to the participants in so far as that seems wise after the hostilities have ceased.

Although the governors of some of the states actively exercise the pardon power which is conferred on them, the President finds it prudent to delegate his responsibility to a large extent to the Department of Justice. He has so many other matters to engage his attention that it is deemed best to charge the Department of Justice with receiving applications, investigating claims, and drafting recommendations. Personal pleas from relatives served as a great drain on the time and particularly the emotions of some of the earlier Presidents, notably Abraham Lincoln. The current practice of delegating the actual administration of the preliminaries to the Department of Justice seems very wise. After the Department of Justice has gone over the application, considered the evidence presented, communicated with the trial judge and prosecutor, and made up its mind as to what should be done, the President

Actual
Exercise of
the Pardon
Power

¹ Of course, the President rarely if ever *chooses* to do this.

² In *Ex parte Garland*, 4 Wallace 333 (1867), the Supreme Court held that "if granted after conviction, it removes the penalties and disabilities, and restores him all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." However, in *Carlesi v. New York*, 233 U. S. 251 (1914), the Court modified that statement in one particular. Carlesi had been convicted and pardoned of a federal offense. When he was tried on another offense in New York courts, evidence was produced to the effect that he was a habitual criminal on the basis of the federal conviction. On appeal his attorneys argued that his pardon had, as was said in an earlier case, "blotted out the existence of guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense" and that hence the fact of his previous conviction could not be used as evidence against him. The Supreme Court rejected the argument. Therefore, one cannot say that a pardon absolutely "blots out the fact of guilt," even though it does restore civil rights.

has only to go through the routine task of following its recommendation.¹

FOREIGN RELATIONS

The exact role of the chief executive in foreign relations depends in large measure upon the background and interests of the particular incumbent. Several of the Presidents have been deeply interested and comparatively well informed in the fields of world affairs, diplomacy, and international law. It is not strange that these men should keep a constant eye on the foreign scene, that they should confer frequently with the Secretary of State on the foreign relations of the United States, and that they should even on occasion prepare notes to foreign powers, draft tentative treaties, and otherwise take a direct hand in the conduct of our foreign relations.² However, most of the Presidents have come from backgrounds which have emphasized internal rather than external affairs, and consequently they are not primarily concerned with what is going on in the rest of the world, nor are they competent to handle the details.

The Department of State and its representatives abroad actually carry most of the responsibility for managing the relations of the United States with foreign countries. These activities are dealt with in some detail in a later chapter³ and hence it is not necessary to consider them here. Nevertheless, it is advisable at this time to note the duties of the President in this connection. It has already been pointed out that he is charged with the responsibility of appointing the ambassadors and ministers of the United States. In some instances he accepts the recommendations of political leaders; in other cases he decides to elevate officers of the foreign service;⁴ and again he nominates men in whom he has personal confidence. Whether he has any real interest in foreign

**Actual
Conduct of
the Foreign
Relations**

¹ In the case of Eugene V. Debs, however, President Harding is said to have taken a direct and personal interest. Debs and many other pacifists had been sent to the Atlanta penitentiary during World War I. After the war most of them were pardoned rather soon by President Wilson. Since Debs had been a particularly outstanding antiwar leader and since Wilson felt so strongly against him, he was not pardoned with the rest. Great public pressure was brought for his release and Mr. Harding personally took steps to arrange his pardon.

² Woodrow Wilson is the best example of a recent President who has taken a direct hand in this field. He apparently prepared virtually every important note sent to a foreign government.

³ See Chap. 34.

⁴ During recent years half or more of the ambassadors and ministers have been drawn from the career ranks.

affairs or not, the President must personally receive and welcome the ambassadors and ministers of foreign governments not only when they arrive and present credentials, but at state functions.¹ If important treaties are to be negotiated, the President must decide, either on his own initiative or upon the advice of the State Department, who the representatives of the United States shall be to the conference which handles such tasks.² Except in rare instances, a chief executive feels it an obligation to keep generally informed of what is transpiring in the world and consequently confers regularly with the Secretary of State. Finally, a President may use his personal influence to encourage cordial relations with other countries. Personal visits, such as those paid to Latin America by President-elect Hoover and President Franklin D. Roosevelt, may do much to improve international understanding and good will. Special messages, interviews, and radio speeches may also be used for this purpose.

MILITARY AFFAIRS

The Constitution designated the chief executive as commander-in-chief of the armed forces³ and hence places grave responsibilities on his shoulders for the national defense. As in the case of international relations, some holders of the office are prepared to take an active part in directing the use of the Army and Navy, but the average President does not have the technical background to perform the immediate tasks associated with these forces.⁴ In nominating officers to the Senate, he ordinarily follows the recommendations of the War and Navy departments, although occasionally political considerations seem to enter in. The war plans call for expert tactical knowledge and hence the executive delegates these to the general staffs of the Army and Navy. The President does ordinarily concern himself with the general policy to be followed and often recommends appropriate legislation to Congress.⁵ He, of course, reviews both the Army and Navy, confers regularly with the secretaries of the War and Navy

¹ It is the custom to give an annual diplomatic dinner at the White House.

² President Wilson, of course, went himself to Paris.

³ Art. II, sec. 2.

⁴ Presidents Washington, Grant, and Theodore Roosevelt among others had commanded forces in actual warfare. President F. D. Roosevelt served as Assistant Secretary of the Navy during a part of the Wilson administrations.

⁵ See, for example, the series of recommendations which F. D. Roosevelt made during 1940-1941 and particularly after the declaration of war against Japan, Germany, and Italy.

departments, and approves rules and orders which are prepared for his signature by experts in those departments.

During a period in which the United States is engaged in war the role of the President in the field of military affairs becomes especially important. Powers which are inherent in his office come into greater use, while Congress invariably confers on him special authority to meet problems arising out of the defense of the nation. Thus Franklin D. Roosevelt has expended large amounts of energy in mobilizing public sentiment, coordinating defense efforts, and conferring both with his own military leaders and representatives of the United Nations. Even before the United States formally entered World War II, the President met Prime Minister Churchill somewhere in the Atlantic to discuss common interests and to draft the much publicized "Atlantic Charter." Shortly after war was declared against Japan, Germany, and Italy by the United States, Winston Churchill came to Washington for an extended series of conferences with Mr. Roosevelt. Within a few days of the attack on Pearl Harbor Congress approved a law which conferred emergency powers of far-reaching character on the chief executive, duplicating in large measure the War Powers Act of 1917. Then in 1942 a second War Powers Act was drafted by Congress to supplement the earlier statute; together these had the effect of giving the President the greatest power ever granted a chief executive of the United States in the national defense domain. By way of exercising these grants of authority Franklin D. Roosevelt within a few weeks of the outbreak of hostilities provided for a War Production Board to organize the resources of the country for national defense purposes, created an office of censorship, provided for the registration and supervision of enemy aliens, and reorganized the War and Agriculture departments, at the same time abolishing the Federal Loan Agency and setting up a new National Housing Agency to assume charge of housing activities, both ordinary and defense. The details of routine and emergency national defense are discussed in a later chapter, which may be referred to at this point by those who desire additional information.¹

THE PRESIDENT AS NATIONAL LEADER

In these days of Fuehrers and Duces it is not too flattering to attribute a fondness for leadership to ourselves. Nevertheless, one

✓ ¹ See Chap. 35.

cannot fairly ignore the fact that over a period of years we have established a reputation for such a tendency, although it may be hoped that we exhibit greater taste in our selection and that we display more mature judgment in deciding how far to follow his dictates than seems to be the case with the Germans, the Italians, and certain other folk. Our yearning for a leader has fortunately never as yet led us to the blind worship which is accorded Hitler. Even after we have enthusiastically embraced a colorful and able Franklin D. Roosevelt, we have the restraint to refuse to accept some of his bolder notions.¹ Moreover, despite the acclaim which a popular President receives, we have rarely, if ever, had the unanimity of opinion toward a single leader that implies a complete stampede. Thus while Theodore Roosevelt, Woodrow Wilson, and Franklin D. Roosevelt have had loyal and devoted admirers, they have had as well bitter critics who charged them with all manner of evil. Nevertheless, we the American people do prefer men to issues and conduct ourselves at the polls accordingly. Indeed as long as the two major parties put up colorful candidates, we do not seem to care very much whether they take a stand on public questions or not. Presidents are identified with the political parties which they represent, but we go farther than that and tend to use them as a symbol of the entire federal system of government. That is not to say that we assign them the place which the English bestow upon their king, for we expect more active leadership than they do. Moreover, not every citizen goes so far as to associate the name of the incumbent President with the United States itself, although that appears to be the psychology of large numbers of citizens.

Inasmuch as the rank and file of people identify the President with the Federal government, and even with the American way of life, they naturally look to him for guidance in all sorts of matters. Congress is far too large and colorless a body to entrance a populace. The courts are associated with the suppression of crime and the litigation of corporations rather than with the main trunk line of government. The administrative agencies stand only vaguely on the outer circle of the limelight and represent the popularly disliked red tape and the bureaucratic practices. But the President is the friend of the people; his actions, even his foibles, are known to everyone; it is he

**The Place
of a Leader
in Ameri-
can Psy-
chology**

**Practical
Results of
the Con-
cept of
Presiden-
tial Leader-
ship**

¹ For example, the proposal to reorganize the Supreme Court.

who labors to make the United States a better place in which to live. The most outstanding Presidents have recognized this extralegal position which they hold and have attempted to fill it as competently as possible. ✓

Perhaps no chief executive has given so much attention to his role as national leader as Franklin D. Roosevelt. It is he who addresses the American people as "fellow citizens." At intervals he prepares the most persuasive and flattering reports which he delivers in the most intimate fashion and warmest tones that a public speaker has perhaps ever achieved in this country. Even a "doubting Thomas," who knows that he will read the words of the fireside chat in his newspaper next day and perhaps find them uninspired, has the rare experience of warming his heart at Mr. Roosevelt's fireside and perchance discovers that the apparent sincerity and friendliness of the President sends disconcerting thrills surging up and down his spine. When recalcitrant Senators and Representatives threaten his program, it is Mr. Roosevelt who can call upon the people and generate such support that he may be able to save the day. The patronage which he dispenses is, of course, a valuable weapon; the party influence which he can bring to bear is often effective in controlling individuals. But it is doubtful whether these alone go far in explaining the remarkable career of Mr. Roosevelt in the White House. It is doubtful whether any other President has ever so completely dominated Congress. During the period following 1933, when this control reached such proportions that foreign observers sometimes classed him with the dictators,¹ the President knew that he had the warm support of the majority of the people and saw to it that Congress was aware of that support also. Hence, while congressmen fumed over abdicating in favor of the executive and while they resented the steam-roller techniques which forced through Congress without opportunity for debate or amendment measures written in the executive offices, they did not dare to revolt. When the voters returned Mr. Roosevelt to office in 1936 by so handsome a plurality, the President frequently spoke of the mandate which he had received from the people and the singular responsibility which he therefore bore in running the government. Whether intentionally or not, he relegated Congress to a secondary place; likewise, denouncing the Supreme

¹ See, for example, Sidney and Beatrice Webb, *Soviet Communism*, 2 vols., Charles Scribner's Sons, New York, 1936, Vol. I, p. 431.

Court because it was supposedly disregarding the desires and needs of the people, he advocated its reorganization.

Not every President could capitalize on the leadership inherent in his office to the extent that Franklin D. Roosevelt has. In the first place, few holders of that exalted office have the personal talents which make possible what Mr. Roosevelt has done. Moreover, the spirit of the time has a great deal to do with it. Even a Franklin D. Roosevelt would probably have grown discouraged at the apathy which characterized the 1920's. But let a terrific economic breakdown grip the nation, let the safety of the country be threatened by external foes and the people in their fear and confusion turn to a leader who speaks to them "as one having authority." No other person is so well placed to do this as the President of the United States.

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CHAPTER XV

THE PRESIDENT AND HIS CABINET

THE Constitution mentions a speaker who is to preside over the House of Representatives; it specifies that a majority will be necessary for a quorum and otherwise goes into considerable detail in matters relating to Congress. Yet it has nothing to say about a presidential cabinet, although it does mention "principal officers" and "executive departments."¹ Considering the fact that it was the custom for executives to have official advisers long before the framers met in Philadelphia in 1787, it is perhaps particularly strange that no provision was included which would necessitate a cabinet. One cannot doubt that the delegates had in mind the importance of counsel in determining policies, for their debates mention a council of appointment, a council of revision, a general advisory council, and so forth. But they apparently deemed it unnecessary to insert any formal provision,² taking it for granted that the President would have sufficient sense to avail himself of advice upon important occasions.

Shortly after taking office President Washington found it necessary to talk over certain questions with the principal officers of government. By 1791 he had come to the point where he called regular conferences of key officials for the consideration of difficult problems. The label "cabinet" seems to have been first applied to these group meetings in the year 1793, when Mr. Washington frequently called in several officials to advise him about the international situation. The informal practice was more or less solidified by the treatment which the President was accorded by the two other branches of government. To start out, Washington seems to have expected that the Senate would serve substantially the same purpose that upper houses in the colonial legislatures filled, that is, it would be an advisory council with as much executive as legislative responsibility. The Constitution more or less implied that this might be the case when it specified the "advice and consent"³ of the Senate in making appointments and treaties; but, when President Washington

**Beginnings
of the
Cabinet**

¹ Art. II, sec. 2.

² They did, of course, give to the Senate a measure of such authority in connection with appointments and treaty-making.

³ Art. II, sec. 2.

sought such assistance in connection with Indian affairs, he was snubbed. Relying on the precedent of English and colonial courts, the President even asked the Supreme Court to render opinions of an advisory nature, but here again he was rebuffed. It is not strange that after such experiences he proceeded to set up an informal group of advisors, despite the criticism occasionally aimed at the "cabinet conclave" which the militant ex-revolutionists thought might take on too much authority.¹

By the end of Washington's two terms the cabinet was definitely a feature of the government, although it lacked any basis more substantial than custom. President Adams might easily enough have shelved the tradition, but he did not choose to do so. It was not until Andrew Jackson appeared on the scene that the chief executive made any emphatic objection to an agency for giving advice. Early in his administration Jackson dispensed with cabinet meetings altogether,² though he subsequently resumed the practice of holding them. His successors followed the custom of calling the heads of the principal departments into an informal conference for the discussion of complicated public problems. They became progressively more reliant on the cabinet, until in Buchanan's administration four or five members practically took over the entire presidential responsibility. Lincoln found certain members of his cabinet irritating and did not depend on them greatly, while Grant more or less openly ignored his advisers.

After another series of Presidents who depended rather heavily upon their cabinets, Woodrow Wilson was independent enough to prefer his own resources or the counsel of a very few personal agents such as Colonel House. When Secretary of State Robert Lansing took it upon himself to call a cabinet meeting during Wilson's absence in Europe, Mr. Wilson became distinctly annoyed and thereafter consulted his official cabinet less regularly than ever. But Wilson's successor Harding perhaps brought the cabinet into record prominence, inviting the Vice-President to attend its sessions and including in its membership men who knew a great deal more about public affairs than did he himself.

¹ The early development of the cabinet is carefully traced in H. B. Learned, *The President's Cabinet*, Yale University Press, New Haven, 1912.

² He did, however, have several intimate friends who acted as advisers in place of the cabinet. These, among them Amos Kendall and Francis Blair, were popularly dubbed the "Kitchen Cabinet."

Few Presidents have experimented with the gadgets of government as much as Franklin D. Roosevelt. This flair for novelty is clearly portrayed by his measures relating to the cabinet. To begin with, Mr. Roosevelt picked a formal cabinet, which included a striking array of the weak and the strong, the amateur and the man of experience. Secretary Woodin, apparently primarily a gentleman with a musical hobby, had little or no background that fitted him for such an important government post as head of the Treasury Department. At the other extreme was Cordell Hull who, although not trained in diplomacy, nevertheless as a Senator had long been interested in international relations. In between these two were such unconventional figures as Harold Ickes and Madame Perkins, the first woman cabinet officer. It soon was apparent that the President was not leaning very heavily on his regular cabinet, although there was no lack of cordiality in his attitude and meetings were not dispensed with. But Mr. Roosevelt found it more agreeable to look for real advice to a little group of younger, more daring men, known as the "brain trust." Moley, Tugwell, Cohen, Berle, Corcoran, and others who appeared briefly on the scene literally fascinated the President and had more or less free access to the White House. The well-known New Deal was fashioned by them rather than by the more conservative and mature members of the formal cabinet. Power went to the heads of some of the brain trusters; the newspapers subjected them to a barrage of ridicule and castigation; and their personal relations with Mr. Roosevelt grew less intimate. Finally, most of them were relegated to the outer darkness, although it has been alleged that their influence continues.

**The F. D.
Roosevelt
Adminis-
trations**

For a time Mr. Roosevelt tried a "supercabinet," the National Emergency Council, which included in its membership more than thirty persons drawn from the cabinet and the independent establishments, especially the New Deal agencies in which Mr. Roosevelt was primarily interested. This body shared the stage with the regular cabinet, gave seats to the heads of the ten ranking departments as well as to chairmen of the newer agencies, and held meetings once each week. There were those who predicted that this large advisory body would eventually entirely supplant the older cabinet; they maintained that the ten secretaries of the traditional departments were too few in number and too limited in point of view to render adequate assistance as an advisory body to

**Experi-
mentation
with a
"Super-
cabinet"**

the chief executive. It is not quite clear what finally led to a return to the older system. Perhaps the very size of the supercabinet militated against its success. Doubtless the *prima donnas* who represented some of the New Deal agencies had to exhibit their personal brilliance and ideologies to such an extent that the advisory function was eclipsed. At any rate the regular cabinet was not dropped and after a time returned to its former place as the chief advisory body. President Roosevelt continues to lean heavily upon advisers who are personal friends, such as Harry Hopkins who occupies quarters in the White House, but he also makes reasonable use of his cabinet.

After a century and a half the cabinet continues to be an important part of American government. With national and international

Results of a Century and a Half of Cabinet Development problems more complex and more pressing than at any previous period, the President's need for sage counsel is greater than ever before. But it must be stressed that the cabinet remains what it started out as: an advisory body.¹

It is still not recognized formally and legally; it has no province beyond that assigned by the particular incumbent of the presidency; no votes are taken and no course of action adopted. The cabinet meets at scheduled times, but may be summoned by the President to special sessions at his pleasure. The meetings consider only those matters which he presents to it and carry the discussion only as far as he desires.² Its opinions may be accorded substantial respect; they may be followed in part; or they may be disregarded entirely. It is up to the President himself to determine how far such advice will be accepted.

THE CABINET TODAY

The cabinet during the last three decades has included in its membership the secretaries of the ten departments of State, Treasury, War, Navy, Justice, Post Office, Agriculture, Interior, Commerce, and Labor. It was proposed by the committee on administrative management in 1936 that two additional departments be set up which would rank with these "big ten." After the exciting battle culminating in presidential defeat, the bill which

¹ On this point, see H. B. Learned, *op. cit.*, especially Chaps. 4-12.

² While no public reports are made as to what goes on in cabinet meetings, former cabinet members have reported some of their experiences in their memoirs. See, for example, D. F. Houston, *Eight Years with Wilson's Cabinet*, 2 vols., Doubleday, Doran & Company, Inc., New York, 1926; and *The Letters of Franklin K. Lane*, Houghton Mifflin Company, Boston, 1922.

would have authorized this enlargement was, of course, dropped. Nevertheless, in 1939 the President saw fit to create three mammoth agencies, the Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency, intended to collect under single jurisdictions, first all the welfare activities of the Federal government, second the public works program, and finally the credit facilities. In February, 1942, the latter was abolished and a National Housing Agency was created to coordinate the varied activities in this field. These establishments are more sizable than certain of the older departments and exercise extremely important powers, but they are not adjudged to be on quite the same plane as the latter. Their heads participate in cabinet meetings,¹ though they may lack the full membership that goes with the traditional secretaryships. At times the Vice-President has been accorded a seat at the foot of the cabinet table, although there has been some question as to whether he is a member or not. Inasmuch as there are no formal rules regulating cabinet membership, it would seem that it would be up to each President to determine what status the Vice-President shall have—at least in so far as the Vice-President is willing to participate at all.²

It has long been the tradition that a President shall enjoy almost complete freedom in naming the members of his cabinet. The Senate, of course, has to confirm his choices to these posts, but except in rare instances³ it has given its approval as a matter of course. The argument runs that the chief executive has to work with the members of his cabinet and therefore should be permitted to choose those persons with whom he thinks he can cooperate best. Nevertheless, it should not be supposed that a chief executive is actually unrestricted in his selection of these officers and that he can designate only those whom he personally likes. Politics, geography, experience, and various other factors must be heeded to a very considerable extent and these frequently determine the actual selection.

Choice of
Cabinet
Members

¹ This statement is as of December 31, 1941 and has been verified by Stephen Early, secretary to the President, in a letter dated as above. However, according to a letter from Mr. Early, dated March 6, 1942, it had not been decided whether the Housing Administrator would enjoy this privilege.

² Calvin Coolidge sat regularly in the Harding cabinet, while John N. Garner and H. A. Wallace have been faithful in attendance at Roosevelt cabinet meetings. Other Vice-Presidents have attended at times but not regularly.

³ The case of Charles Warren of Michigan nominated by President Coolidge as Attorney General is the only recent case in which approval has been refused.

Although President Washington included both Thomas Jefferson and Alexander Hamilton in his cabinet, he discovered that two such divergent influences led to difficulties. Since the days of Washington it has been the almost uniform practice to limit cabinet choice to the members of the President's own political party. Cleveland named a "mugwump" Republican, who had been a prominent supporter of the Democratic nominee throughout the campaign, as Secretary of State; Theodore Roosevelt and Taft maintained a Democrat in the War Department; while Hoover chose a nominal Democrat as Attorney General.¹ But these appointments were so exceptional that they serve only to emphasize the rule; moreover the men involved were not for the most part prominent in opposing political camps. Franklin D. Roosevelt has departed from the tradition to a greater extent than any other chief executive. Ickes and Wallace of his original cabinet certainly came from Republican antecedents and background. Although they supported the candidacy of Mr. Roosevelt, they had at one time been at least fairly active in Republican politics. Mr. Woodin, largely a personal choice, had apparently been Republican in sympathies, although he had not been actively identified with party politics. Then during the closing months of his second term Mr. Roosevelt brought in two men who had been very actively associated with the Republican party and who had not supported his presidential aspirations. Henry Stimson, for many years a leading Republican and Secretary of State in the Hoover administration, took over the secretaryship of War, while Frank Knox, Republican candidate for Vice-President in 1936, was made Secretary of the Navy. In both cases the appointments were explained as dictated by the national emergency arising out of the world situation.

In picking the members of his own political party for cabinet seats, a President sometimes feels that the national chairman should be rewarded with the postmaster-generalship. Thus Warren G. Harding named Will H. Hayes, Herbert Hoover selected Walter Brown, and Franklin D. Roosevelt designated James A. Farley. Party leaders, who have not occupied official positions in the political organization but who have contributed generously to campaign expenses or otherwise rendered effective aid, frequently desire cabinet membership. Not all of these can be recognized because of the small number of posts

¹ President McKinley also broke the tradition by naming a "Gold Democrat" to the Treasury Department.

available, but an attempt is usually made to bring in certain of the most deserving. Although the chief executive and the cabinet members are regularly thrown together and find cordial relations very desirable, it is a common practice for a President to include in his cabinet one or two men who lead those factions of the party which have not been too warm in their support. This is, of course, done in order to heal party wounds and as far as possible bring the various elements of the party together into an effective and cohesive unit. Acting on this principle Woodrow Wilson brought in William J. Bryan as Secretary of State, although the two must have had very little in common.

The various sections of the country feel that they should be represented in the President's cabinet and exhibit disappointment if they are ignored. There is little doubt that choices have been frequently made on this basis, despite the comparative weakness of the man named and the personal preference of the President for someone else. Occupants of the White House often have their eyes on a second term and realize the importance of placating party organizations throughout the country. Even if this is not the case, the adverse criticism that is generated by leaving out important geographical areas may be enough to sway the chief executive. Nevertheless, Franklin D. Roosevelt has departed from this dictate of custom to a considerable extent. In his original cabinet New York had far more representation than the hinterland thought was fair, while more than half of the country stretching from the Mississippi to the Pacific could point to only two members.¹ As changes were made, the situation remained more or less unsatisfactory to those who demanded wide geographical distribution; in the spring of 1942 New York had three of the ten major seats, Illinois two, Pennsylvania two, and the remainder of the areas only three altogether.²

While the cabinet as a whole has never been selected on the basis of the members' expertness in handling administrative tasks, some attention is often paid that consideration. The Secretary of Labor is almost invariably someone who has been associated with organized labor.³ The Secretary of Commerce more likely than not will be a man who has had considerable

Geographical Representation in the Cabinet

Other Factors Influencing Selection

¹ The secretaries of War and Agriculture.

² Indiana, Texas, and Tennessee each held one seat in 1942.

³ In appointing Madame Perkins, Franklin D. Roosevelt departed from this rule and alienated certain labor leaders.

experience in business affairs.¹ The Secretary of Agriculture is almost always a man who has been directly or indirectly interested in agriculture. The Attorney General is, of course, always a lawyer, although he may have had little to do with public affairs before taking office. There are several instances where secretaries of State and of the Treasury have had at least fairly extensive experience in the fields of world affairs and public finance.²

It is not strange that cabinet members usually include at least one personal associate of the chief executive. Presidents are human; they not only like to have their friends within call but also delight in conferring honor upon them. President Harding brought in his friends Daugherty and Fall; Coolidge recognized his Amherst friend H. F. Stone; Hoover included the president of his alma mater who also was an agreeable fishing mate, R. L. Wilbur; while Franklin D. Roosevelt started out with William H. Woodin as Secretary of the Treasury and later named Harry Hopkins as Secretary of Commerce on this basis.

Although Franklin D. Roosevelt scheduled two cabinet meetings a week when he was experimenting with his supercabinet, it is now customary to hold one meeting each week on Friday afternoon at two o'clock.³ Of course, this does not imply that, when conditions are normal, meetings are held regularly during holiday-time, the dull months of summer, or when the President is indisposed or absent from Washington. Again it does not mean that the cabinet may not be called into more frequent session if domestic or international affairs are at such an acute stage that immediate decisions must be made. A single meeting may last for only a few minutes or it may go on for hours, depending upon what is under consideration and how long the President wants to prolong the discussion. The various members arrive at the executive offices in their official automobiles, are ushered into the cabinet room, and seat themselves around a table which is intended for their use. Unlike the informal arrangement in some countries, the cabinet of the United States follows a strict seating order which places the secretaries of State and of the Treasury to the immediate right and left of the President. He

¹ In appointing Harry Hopkins to this post Mr. Roosevelt also broke a tradition and was roundly criticized by business leaders.

² Secretaries of State Stimson, Hughes, and Hull may be mentioned. In the Treasury Department Hamilton, Gallatin, McAdoo, and Mellon might be cited.

³ This information is as of December 31, 1941 and was furnished by Stephen Early, secretary to the President.

now sits in the center of an octagonal table, while the secretaries and administrators are placed around the sides according to the seniority of their departments.¹ If the Vice-President attends, he is given the place facing the President.

In the English cabinet an agenda is prepared beforehand and circulated among the members. A cabinet secretary or his assistant is always present to keep a record of discussion. However, **Order of Business** in the United States there is no formal order of business, although on occasion members may be told beforehand what will be considered. We have no cabinet secretary in the United States and no minutes are regularly kept, but the President may call in his personal secretary to take notes if he thinks it desirable. No votes are taken and recorded; no motions put; and no resolutions are passed. The exact procedure will depend upon the President himself. He may stress formality, dignity, and seriousness; or he may prefer informality and attempt to minimize dullness and pomposity.² Newspaper men are, of course, excluded; nor is any formal summary regularly issued for popular consumption, as is the custom in certain countries. Any statement as to what has transpired is given out by the President or by his public-relations secretary. Inasmuch as no formal decisions are made by the cabinet, it is not possible to announce that any definite action was taken. However, Presidents may indicate that the cabinet discussed the international situation or some other pending question of widespread popular interest.

Although not too much is known about what goes on in the secrecy of cabinet meetings and there is doubtless considerable variation from administration to administration, it is generally understood that two types of business are transacted.³ In the first **General Nature of Cabinet Business** place, the broad policies of the government are examined, canvassed, and dissected. Matters of detail are discussed by the higher officials within a department or by the President and a

¹ Secretaries usually buy their chairs when they leave office and take them home for souvenirs. Hence the chairs are ordinarily quite new in appearance. A new octagonal mahogany table was presented by Jesse Jones for this purpose in August, 1941. The ten secretaries, the three administrators, and the Vice-President are provided with places around the President who sits in the center rather than at the end as formerly.

² It is reported that Franklin D. Roosevelt sometimes relates a story or an amusing incident. Lincoln was apparently fond of stories also.

³ See W. C. Redfield, *With Congress and Cabinet*, Doubleday, Doran & Company, Inc., New York, 1924; and D. F. Houston, *Eight Years with Wilson's Cabinet*, Doubleday, Doran & Company, Inc., New York, 1926.

department head, but they do not as a rule occupy the time of the cabinet as a body. But the President may frequently consult the cabinet on questions of what attitude the United States shall take on some international situation, of what shall be done to reduce unemployment, of how a drought in the farm belt can be ameliorated, or of what the government can do to control labor disputes. Thus, its chief function is in helping to formulate the policies of the United States on far-reaching public questions. How great its contribution will be in policy-making depends in large measure on the President himself, but no one can doubt its important role over a period of a century and a half.

The second type of business is somewhat more routine. If there is a question about which department is to handle a certain problem, if several departments are in conflict over an issue, if some common approach to the exercise of specific authority shared among several departments seems desirable, then the President may ask the cabinet to attempt coordination. Needless to say, in a government as complicated and gigantic as ours, misunderstandings may arise and conflicting policies may be followed. When these are ironed out, important benefits accrue.

Members of the cabinet at present receive annual salaries of \$15,000 per year.¹ They are entitled to Packards, Cadillacs, or other expensive automobiles for official use and may collect traveling expenses from the Treasury when they are away from Washington on government business. They are, of course, provided offices, which in the case of those departments occupying the newer buildings are spacious, sumptuously furnished, and air-conditioned, staffed by numerous secretaries, clerks, stenographers, messengers, and other functionaries. Secretary Ickes even has a kitchenette in which he can prepare his own meals when he does not desire to patronize the dining facilities in the Interior buildings. Residences are not furnished the cabinet members, nor is generous allowance made for expenses incident to entertaining. As a result, some officers have paid out their entire salary for the rental of suitably

¹ These salaries and perquisites are paid not on the basis of membership in the cabinet but because of administrative positions which are held in the departments and agencies. For purposes of convenience it seems well to deal with compensation at this point, but strictly speaking it is inaccurate to speak of compensation of cabinet members. The compensation referred to above applies to the secretaries of the ten departments; administrators may be paid as little as \$10,000 per year.

located residences. Others who have been very prominent in Washington social life complain that the expenses of entertainment eat up their entire income from the government. Most of the cabinet members seem to find it difficult to make ends meet unless they possess ample private means.

Attendance at cabinet meetings ordinarily will not require more than one half-day per week and may not fill such a period very completely. The question may then be raised as to how members spend the remainder of their time. It must be remembered that the cabinet members are also the secretaries of the great administrative departments and in that capacity may find that the demands made upon them are such as to leave very little time or energy for anything else. Herbert Hoover, as Secretary of Commerce, regularly arrived at his office by seven o'clock in the morning and often remained until seven or eight or even later in the evening. Harold Ickes is supposed to put in twelve or fourteen hours daily in his office. Cordell Hull has reached his office as early as four o'clock in the morning and remained until after midnight during the succession of international crises which seemed to be the rule during 1940-1941. Of course, not all cabinet members are so active as these men in the affairs of their respective departments. As a matter of fact, it may seem that some of them are content to leave routine matters almost entirely to their subordinates in the department so that they themselves may be free for other activities. They have a considerable discretion in deciding what they will do with their time. If they want to draft policies and actively administer their departments, they have an immense field in which to work, for even the smallest administrative departments are charged with broad responsibilities. In this case they will confer frequently with their general assistants and the permanent staff members in order to keep in touch with what goes on in the department. They may take an active part in making appointments, handling correspondence, receiving callers, tracking down complaints, negotiating with other departments, planning programs, interpreting their departments to the public, and cultivating the favor of Congress so that generous appropriations may be forthcoming.

General
Activities
of Cabinet
Members

Many cabinet members find that speaking engagements make heavy inroads on their time and energy. Washington is the scene of numerous conventions, conferences, and other sorts of meetings.

What is more natural than for these to expect a representative of the government to address the hundreds or thousands of delegates who pour in from various parts of the country? The President himself sometimes undertakes such assignments; Senators not uncommonly accept them. But in many cases the delegates are more interested in some administrative service and consequently urge the secretary of that agency to speak. Agricultural associations obviously expect the Secretary of Agriculture to appear and speak. Business groups are interested in hearing from the Secretary of Commerce. Lawyers are not complimented if the Attorney General fails to make an appearance. International lawyers usually honor the Secretary of State with their presidency and in return expect him to speak at the annual dinner. A cabinet member who enjoys speaking and who is willing to spare the time can easily keep a full schedule.

The social position of cabinet members is outstanding both in official circles and in private Washington society. In addition to participation in the social functions held at the White House, the cabinet members and their wives must do at least a minimum of entertaining themselves. If they are socially inclined and have the necessary funds, they may find themselves the hosts at numerous dinners, receptions, teas, and other affairs. Likewise they usually go out a great deal to diplomatic dinners, theater parties, balls, and many other functions associated with the whirl of society in the national capital. Some of the cabinet members have not dined at home without guests more than two or three times a month; they are invariably lunching out; and more often than not have an evening engagement.

POSSIBLE CABINET CHANGES

For many years there has been some agitation to give cabinet members seats in the houses of Congress, either with or without the right to vote. Officials of foreign cabinets are frequently members of legislative bodies and indeed serve as leaders of them.¹ In governments in which the relationship is not so intimate, cabinet members are still almost always permitted to attend the sessions, present proposals relating to their departments, and take part in the debate.² During the early years of the republic the

¹ Where the cabinet form of government exists, this is always the case. The cabinet in England is an excellent example of such leadership.

² In Argentina, Japan, and certain other countries ministers may speak, although they are not members of the legislative branch.

House of Representatives clearly showed that it did not desire the presence of administrative officials at its sessions, even when bills concerning their departments were being debated. Despite every argument, Congress has shown very little interest in any modification which would lead to more intimate relations with the cabinet.¹

As a matter of fact, the situation involves less serious division and separation than appears on the surface. The basic work of lawmaking is being increasingly transacted in committee rooms rather than on the floor of Congress, and there is every reason to believe that this will continue to be true. Cabinet members appear frequently at these committee hearings in order to reply to questions, to urge certain courses of action, or to defend their departments against charges that have been made. Thus they already have in large measure the right to speak. Unless the cabinet system were introduced, which stipulates that the cabinet shall stand or fall on its record, the mere giving of votes would not seem wise. It would simply concentrate more power in the hands of the executive without any similar increase in executive responsibility. Theoretical arguments and the practical example of England tell heavily in favor of the cabinet system, but its adoption here would involve such a drastic change in the American scheme of government that it seems quite improbable and even undesirable.²

Another criticism of the cabinet stresses its rather limited background. Many of the public questions currently confronting the nation have the most complex ramifications imaginable. Even for the most competent people it is not too easy to determine the national policy. The cabinet, it is said, does not provide very adequate representation for the newer agencies which

**Broader
Representation**

¹ However, in the first Congress department chiefs appeared on the floor of the houses and even took part in the debate. Both Secretary of State Jefferson and Secretary of War Knox spoke in Congress in 1789-1790. Because of the Antifederalist opposition to Hamilton he was not permitted on the floor, and soon after the practice was discontinued, never to be revived. In 1865 a House committee and in 1881 a Senate committee reported favorably bills which would give cabinet members seats without votes. In 1912 President Taft announced that he also approved such an arrangement. All discussion, however, came to naught. The history of these proposals and a compilation of the "pro" arguments will be found in *Privilege of the Floor to Cabinet Members; Reports Made to the Congress of the United States, Senate Document 4, Sixty-third Congress, special session of the Senate, 1913*. For an extensive criticism of the proposal, see W. F. Willoughby, *Principles of Legislative Organization and Administration*, Brookings Institution, Washington, 1934, Chap. 13.

² For recent discussions of this problem, see Harold J. Laski, *The American Presidency*, Harper & Brothers, New York, 1940, Chap. 2; and E. S. Corwin, *The President: Office and Powers*, New York University Press, New York, 1940, pp. 304-305.

would have perhaps fresher and less conventional points of view. The legislative branch is not given an opportunity to be heard; nor are the courts given any voice. Although this is an age of science, there is ordinarily not a single person in the cabinet who can advise with any authority in that field.¹ Business, farming, education, religion, and the arts may have no representative in its deliberations who can speak out of firsthand experience.

No one can deny the intricate character of current public problems, nor can one dispute the need of the best and most mature judgment to solve or alleviate those problems. The repeated mistakes, the blundering in the dark, the premature decisions, and the opportunism of present-day governments is indeed most discouraging. The question is: Could these weaknesses of government be corrected or at least minimized by a cabinet of broader background? An enlarged cabinet might very well prove so cumbersome and unwieldy that it would break down of its own weight—as apparently happened in the case of the National Emergency Council. Yet it would be impossible to bring in representatives of the groups and skills noted above without very materially adding to the size.

To some extent these criticisms lose sight of the fact that the cabinet is not the only advisory instrumentality available. Presidents ordinarily have wide contacts with legislators, judges, the **Other Advisors** more vigorous administrators, men of affairs, educators, the clergy, and perhaps even scientists. If they do not themselves have all these associations, it may be that members of the cabinet can add these backgrounds. The public-relations secretary of the President follows the sentiment of the various interest groups as mirrored by the newspapers. The President himself may read books which reflect the studied conclusions of certain experts.² All of this is not to minimize the seriousness of the problem of adequate representation of national interests in the cabinet, but it does help to view the problem objectively.

¹ However, Herbert Hoover, as Secretary of Commerce under Harding and Coolidge, represented the field of engineering, while Ray Lyman Wilbur, Secretary of the Interior under Hoover, had been a practicing physician previous to his position as president of Stanford University.

² In his press conference of July 22, 1941 President Roosevelt called the attention of his visitors to two books on public affairs that had recently appeared and recommended them to the American public. Douglas Miller's *You Can't Do Business with Hitler*, Little, Brown & Company, New York, 1941, was particularly praised. See the *New York Times*, July 24, 1941.

We have already stressed the advisory character of the counsel which the cabinet offers the chief executive. And we have likewise stressed that the President may or may not be guided by what his cabinet suggests—there is no force behind the advice which they give beyond the respect that the President may have for them. The striking growth of the presidential office¹ has given the holder of that office tremendous power, which may be directed toward beneficial ends or employed to menace the very foundations of the republic. Under such circumstances the need for wise counsel is deemed especially urgent by competent observers.

Professor Corwin concludes his substantial study of the presidency with the observation that “presidential power is dangerously personalized.”² One reason for this state of affairs, he sees in the “haphazard method of selecting Presidents,” but perhaps more important is the lack of a “governmental body that can be relied upon to give the President independent advice and whom he is nevertheless bound to consult.”³ Mr. Corwin proposes a new cabinet which would substitute the “leading members of Congress” for the departmental secretaries or which would combine the leaders of the two legislative branches with certain of the more general officials, such as the Secretary of State, the Secretary of the Treasury, and the Attorney General.⁴ No constitutional obstacles lie in the path of such a transformation; nor would the presidential system of government be abandoned in favor of the cabinet form. Such a cabinet, Mr. Corwin believes, would provide far more mature and solid advice than can be expected from men “whose daily political salt” comes from the presidential table.⁵ “It would capture and give durable form to the casual and fugitive arrangements by which Presidents have usually achieved their outstanding success in the field of legislation.”⁶

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¹ This is discussed in Chap. 13 above.

² *Ibid.*, p. 316.

³ *Ibid.*, p. 304.

⁴ See *op. cit.*, p. 316.

⁵ *Ibid.*, p. 304.

⁶ *Ibid.*, p. 304.

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CHAPTER XVI

THE PRESIDENT AND CONGRESS

IN THE world today there are two principal types of democratic government in actual operation: cabinet and presidential. Cabinet government, one of the significant contributions which the English have made, is based on a very intimate relationship between the executive and legislative branches. The cabinet, which is the most important element of the executive in England, is chosen from among the leaders of the dominant political party¹ in the House of Commons. The cabinet drafts a program which is summarized in the message of the king to Parliament and then proceeds step by step to carry that program into effect. Although private members of the legislative branch may introduce bills of their own, there is very slight chance of their passage.² Furthermore, all proposals to spend public funds can originate only from the cabinet. The House of Commons may debate the various bills which the cabinet has prepared and in minor particulars may go so far as to amend them. However, if the House of Commons refuses to accept the general provisions of any bill or if major changes not acceptable to the cabinet are made, then the cabinet must follow one of two courses. It may resign at once and clear the way for a new cabinet which will receive the support of the House of Commons. Or hoping that the voters will favor its policy, it may call for new elections, with the appeal to the electorate to choose "M. P.'s" who will uphold the cabinet's position. If the new membership of the house does act favorably on the controversial legislation, the cabinet is regarded as triumphant and consequently remains in office. But if, as frequently happens, the voters reelect the same members, the cabinet has no alternative but to resign. It is apparent that the cabinet system goes far in guaranteeing harmonious relations between the executive and

Cabinet
Government

¹ This is the case during normal times; however, during periods of national emergency, such as 1940-1942 for example, representatives of all parties may be included in the cabinet.

² Professor Laski asserts that only three such bills of any importance have been passed during the present century. See his *Parliamentary Government in England*, The Viking Press, New York, 1938, pp. 243ff.

legislative branches—if there is lack of unity changes will be made which will have the effect of restoring the equilibrium. Under this form of democratic government the two great executive and legislative branches must be geared closely together and except on rare occasions work toward the same end.

Presidential government, on the other hand, is a contribution which the United States has made to democratic institutions. In framing their constitutions many countries have examined the presidential form, but except for certain Latin-American countries none of them has seen fit to adopt it. Even in the case of the Latin-American governments there has been a disposition to modify presidential government in such a way as to incorporate certain characteristics of the cabinet type.¹ This form of democracy separates the executive and legislative branches, assigning to each a major role in the government. No machinery is provided for integrating the two—indeed the basic concept seems to be that the two will check each other rather than cooperate in a common purpose. Of course, there is not an absolute separation of powers, for under the complex social conditions that now prevail such a type of relationship would produce chaos and even the breakdown of the entire governmental system. The men of 1787 saw fit to supplement separation of powers with the doctrine of checks and balances. Thus they gave the President the veto power, authorized the Senate to confirm presidential appointments and to ratify treaties, and permitted the legislative branch under extreme circumstances to remove a chief executive through impeachment proceedings.

Under a comparatively simple social system the separation of the executive and legislative branches is not provocative of acute problems. There are no complicated regulatory functions to be exercised and hence the chief purposes of government are to protect the country against foreign attacks and maintain internal order. General policies have to be worked out, but there is usually plenty of time. Moreover, the varying points of view held by the executive and the legislative may be quite valuable in arriving at a decision as to the exact nature of the policy. Since these relatively simple conditions existed in the United States during its early years, there was no crying need for

Presidential Government

Experience of the United States with Presidential Government

¹ Argentina, for example, permits her ministers to attend sessions of Congress and speak on the floor of either house.

integrating the two branches. The very independence of each made for a ruggedness that was highly prized by many Americans. As the industrial and social structures became more and more complex, the government was called upon to meet situations which had never been envisioned by the forefathers. The lack of cohesiveness between the executive and legislative departments became more and more evident, but the resourcefulness of the people made it possible to get along for many years without too great difficulty. The patronage system provided an extralegal tie of considerable strength; the political parties themselves contributed to a cementing of the executive and legislative branches. During normal times Congress might pay very little heed to the recommendations of the President,¹ despite the chains of party and patronage, but critical periods saw the members of Congress in a somewhat chastened mood, fearful of public sentiment, and in general willing to work with a President in setting up remedial measures. Nevertheless, the system creaked and groaned under its burden of highly complicated problems, as an oxcart might if loaded with steel girders.

When Franklin D. Roosevelt became President, the United States was confronted with problems of a magnitude it had seldom, if ever, faced. Herbert Hoover had sought to bring the resources of the government to the assistance of a country gripped in the toils of perhaps the world's most serious economic cataclysm, but his native caution coupled with the refusal of Congress to cooperate had prevented much effective action.² Franklin D. Roosevelt believed that he had a mandate from the people to throw every ounce of energy of the government into an elaborate program to cope with the situation. Using his patronage power with unsurpassed shrewdness and playing upon the fear psychology which gripped even the members of Congress, Mr. Roosevelt brought about a close cooperation between the executive and legislative branches. Indeed it is probable that the harmony during the years 1933-1936 reached heights never before attained in the United States.

In his messages to Congress Mr. Roosevelt referred again and again to his concept of the proper relationship between the executive and

The Concept of Franklin D. Roosevelt

¹ For example, Calvin Coolidge, although a sound party President, found that Congress paid little attention to his recommendations.

² The Reconstruction Finance Corporation was set up at this time and several other steps taken, but they were almost like drops in a bucket.

legislative branches,¹ pointing out the critical plight of the country, the impotence of either branch alone to relieve the situation, and the absolute need for solidarity. Admitting that the separation of the two had been reasonably satisfactory during the earlier years of the republic, the President maintained that one of the most serious problems under the highly developed socioeconomic system of the 1930's was that of permanently tying the executive and the legislative together.

Mr. Roosevelt proposed an arrangement under which Congress would surrender a considerable part of its authority to the President and permit the government to be one of strong executive leadership. Driven by the exigencies of the times Congress acceded to the wishes of the President. Virtually every piece of important legislation was drawn up in the executive office and sent to Congress with instructions to "rubber stamp" it without amendment or debate. After a sweeping surrender of congressional authority the President began a reign by executive orders. The result was a series of elaborate measures to give relief to the jobless, to expand credit, to assist the farmer, to regulate business practices, and to revalue monetary standards. Never before—at least except in wartime—had the United States witnessed a similar expenditure of public funds or as vigorous governmental activity. Never before had the people lived under the fundamental assumption that the government was responsible in every phase of human life. After many months had passed, it seemed that a permanent arrangement had been effected under which the President assumed the role of leader and Congress the role of the led.

After the election returns had given Mr. Roosevelt a most handsome vindication in 1936, there seemed more reason than ever for the continuance of the executive-legislative harmony which had been so striking a feature of the preceding four years. Mr. Roosevelt had himself apparently not expected such popular approval, but after election he referred repeatedly to the mandate of responsibility which had been given him.² For a time Congress continued its discipleship, although there appeared indications of growing resentment on the part of many members of both houses at the secondary role to which they had been assigned. In 1937 the President felt so strongly entrenched that without even consulting

Develop-
ments from
1936 to
Date

¹ See his messages to Congress during 1934.

² See the files of the *New York Times* during the closing months of 1936 and the year 1937.

congressional leaders beforehand he sent over to Capitol Hill his court reform bill. Although it seemed likely at first that Congress would continue its usual docility, expressions of popular sentiment gave courage to some of the more independent members and the bill was finally defeated. On the strength of this triumph certain congressmen looked about for new fields to conquer and saw their opportunity in the administrative reorganization bill. When originally discussed in 1937, it had occasioned widespread approval and very little criticism; but when it came to Congress in 1938, it was the occasion of a bitter fight and was generally appraised to be of even greater importance than the court bill in determining the future relations of the President and Congress. The defeat of the bill, which was materially assisted by Father Coughlin, brought to an end the previous working agreement by which the executive drafted a program for Congress to accept without modification. Mr. Roosevelt no longer speaks of his concept of presidential leadership over Congress; nor does he repeatedly batter his head against the new barrier which has been erected between the executive and legislative branches. Congress has had the good sense not to go to extremes in ignoring the wishes of the chief executive. For the time being, at least, the relations between the two branches seem neither to have returned to their pre-1934 level of independence nor remained at the 1933-1936 intensity of executive dominance, though the war has naturally made the presidential role spectacular.

The experience of the years 1919 to 1932 seems to prove rather conclusively that the traditional relationship between the President and Congress is not satisfactory in this day of immensely intricate public problems. On the other hand, there is a good deal of evidence from the 1933-1936 period which indicates that complete executive dominance is likewise unsatisfactory. The first condition prevents a reasonably efficient handling of public problems; the latter, while it may be effective enough for short periods, still embodies serious weaknesses. Congress tends to degenerate when it is little more than a rubber stamp. Conversely, the executive is inclined to take itself too seriously, to imagine that it carries full responsibility for all problems incident to life in the United States. These conditions are particularly unacceptable because they carry the possibility of extreme action on the part of the President. In any efficient government the prompt exercise of power is very necessary, but in a democratic government there must also be ade-

**The Future
of Execu-
tive-legis-
lative Re-
lationships**

quate checks against the arbitrary use of that power. Cabinet government provides far-reaching powers for the executive, but it at the same time creates machinery for checking those powers when they seem to conflict with the national interest. The executive dominance in 1933-1936 carried with it extensive powers, most of which are probably desirable in this day and age. Its chief dangers lay in its remoteness from any easily imposed check. There was no very adequate method by which an agency of the people, such as Congress, could control a President who had demonstrated his ineffectiveness.

What then of the future relationship between these two highly necessary branches of government? As long as we have a national emergency the exigencies of the times are likely to enforce a considerable degree of coordination of their efforts. If comparative international normalcy returns, there is every reason to expect very difficult problems of internal readjustment. How are the countless workers in the munitions plants to be reabsorbed in the productive enterprises of the nation? What will be done with the plethora of commercial chemists, engineers, physicists, and other scientists who have been trained to meet war needs? What about the national debt, the burden of taxes, and the demands of veterans for bonuses and pensions? These and other problems will demand adequate attention from the government. The introduction of cabinet government has been advocated as a method of meeting these problems. A fair-minded observer sees much in that system as used in England that is impressive. However, American traditions have run along somewhat different lines. Moreover, this change would require a drastic revamping of our constitutional system which might be accepted under sufficient pressure, but would encounter strong opposition. It has been proposed that a more logical step in the United States would be the transformation of the cabinet into a body either entirely or largely made up of congressional leaders.¹ No constitutional amendment would be needed; besides Presidents have already made use of such a scheme on an informal basis without doing away with their regular cabinets. No one can doubt the seriousness of the situation, but the exact steps that should be taken to meet it are difficult to foresee in a country as rapidly changing as the United States.

¹ Professor E. S. Corwin has made such a proposal in his *The President: Office and Powers*, New York University Press, New York, 1940, pp. 304-305.

FORMAL RELATIONS OF THE PRESIDENT AND CONGRESS

We have already pointed out that the forefathers deemed it prudent to *separate* the three branches of Federal government, rather than to confer all authority on one branch or to integrate the executive and legislative under a cabinet form of government. At the same time, they were men of experience and appreciated interdependence and the necessity of cooperation. Consequently the executive was given certain powers relating to the legislative process, while Congress received several grants concerning the President. It is appropriate at this point to look at the functions of the President which have a direct bearing on the enactment of laws.

There are countries which permit the executive to call the legislative body into session and to dismiss it at his pleasure. The framers of the Constitution had no disposition to confer this authority on the American President, for they had experienced the arrogant and dictatorial practices of the colonial governors who sometimes ruled without legislatures. However, they did anticipate occasions when the two houses of Congress might not be able to agree on a date of adjournment and hence empowered the President to act.¹ The opening date for congressional sessions is fixed by the Constitution, but the time of adjourning is left to the discretion of Congress itself. By insisting upon the disposal of certain business before adjournment upon threat of calling the members back at once into special session, the President has something to say about how long Congress will meet, although this does not involve fixing an exact date of adjournment.

The most important formal control which the chief executive may exercise is his right to call special sessions. Before the Lame Duck Amendment provided that Congress assemble in regular session shortly before the President himself took office, it was a common practice for new Presidents to call special sessions soon after they were inaugurated in March. They wanted the Senate to confirm appointments and perhaps preferred to have attention given to general legislative business at once rather than after some nine months had elapsed. Presidents Taft, Wilson, Harding, Hoover, and Franklin D. Roosevelt all saw fit to summon Congress into special

¹ Art. II, sec. 3. This anticipation has not been realized in practice, for Congress decides on a date of adjournment without too much difficulty. In October, 1914, however, Woodrow Wilson was urged to, but did not, use it; see *New York Times*, October 24, 1914.

session at the beginning of their terms. Inasmuch as Congress now starts a regular session just before a President is inaugurated, there is far less reason for special sessions than before the adoption of the Twentieth Amendment. Franklin D. Roosevelt has made use of this power only once since the new amendment went into effect.¹ Unless a Congress proves recalcitrant and adjourns without taking any action on a bill deemed especially important by a chief executive, there does not seem any great need for special sessions at a time when Congress is already spending about three-fourths of the year in Washington.² However, if sessions of less than six months are again restored, an emergency might very well demand a special session.

The President is required by the Constitution to "give to the Congress information of the state of the Union, and recommend to
Messages their consideration such measures as he shall judge necessary and expedient."³ How frequently such reports shall be made and what they shall concern is left to the discretion of the President. It is also up to him whether the messages will merely be sent to be read by a clerk or whether he will go in person to deliver them to the assembled Congress. From the very beginning Presidents ordinarily have prepared fairly elaborate messages to be transmitted at the convening of a new session. In addition to comments on the general situation confronting the country, the chief executive usually summarizes the legislation which seems appropriate and necessary and may even go so far as to furnish the draft of one or several bills. After Congress has finished the preliminaries of its new session, it sends a formal notice to the President informing him that it is ready to receive any communications which he may wish to make. The chief executive then responds by sending a written message or going himself to address a joint session.

Presidents Washington and Adams followed the latter practice of delivering some of their most important messages in person, but that custom was permitted to lapse for more than a century, until Woodrow Wilson decided to resurrect it. The most recent chief executives have not followed a uniform rule in this respect: Harding continued the Wilson precedent; Hoover preferred to revert to the earlier written

¹ This was the result of Congress's failure to take action on certain items which the President regarded as *must* business. The session was called for the late fall of 1939.

² During wartime Congress is in session virtually throughout the year, though it may adjourn for periods of several days now and then.

³ Art. II, sec. 3.

communication; Franklin D. Roosevelt has generally gone in person, although he has at times sent written messages even for the opening of Congress. Of course, even if a President delivers an oral address to review the state of the nation, he will make much use of the written communication also, for following the general message as many as fifty supplementary messages may be sent to Congress during a single session. Immediately following the first message will arrive a more or less elaborate communication transmitting the annual budget. Then as other items arise, the chief executive may send in brief communications if the matter is of minor consequence or longer ones if the occasion seems to warrant it. Some of these special messages dealing with national defense or the international situation may be regarded as of such interest that they will be addressed orally to the assembled congressmen and broadcast by national radio chains to the people.¹

Whether a President will find it advisable to go to Capitol Hill to speak to Congress or send a message for a clerk to read depends rather largely upon his own talents. Clerks pay more attention to presidential messages than to ordinary documents which they mumble through, but even so their reading usually leaves something to be desired. Certain chief executives have prided themselves on their commanding ability as public speakers—it seems only logical that these Presidents should visit Congress to say orally what they have in mind. Obviously, more attention will ordinarily be paid to the sentiments uttered directly by a President than to secondhand reading by an employee of the Senate or House of Representatives. On the other hand, no chief executive would find it wise to deliver all of his communications orally, for this would consume a considerable amount of his time as well as impose upon the time of Congress.

Spoken
versus
Written
Messages

As it is, the formal addresses of the President are the occasion of some of the most stately ceremonies held in Congress. After the Senators and Representatives have assembled in the chamber of the House of Representatives, word is sent to the President who ordinarily waits in the room set aside for his use in the Capitol Building. Members of the two houses then escort him up to the place on the dais from which he is to speak; the members of both houses arise as he enters the chamber; and he is presented quite ceremoniously to the assembled

¹ Franklin D. Roosevelt did this on several occasions during the years beginning with 1939.

legislators and to the radio audience by the presiding officer, frequently the Vice-President. Careful attention is usually paid to what the President says and there is suitable applause both during and after the speech. Of course, if oral addresses were everyday affairs much of this ceremoniousness would probably be dropped.

The influence of messages varies widely. During the years immediately following 1933 a message was as revealing as a speech from the

**Influence
of Presi-
dential
Messages**

English throne,¹ for one could be certain that what was recommended would be carried out. At other times the relations between the executive and legislative branches have been so strained that virtually no attention has been given to presidential desires. For the most part, their role has been somewhere in between these extremes—it has been dangerous to take them at their face value, but at the same time they have given some indication of the course of future legislation. Especially if a chief executive is of the aggressive type, he may be able to stir up enough popular support to constitute a very potent force, which the members of Congress will be reluctant to disregard.

The President does not have the technical right to introduce bills into one of the houses of Congress, for the rules of both houses limit that action to members. Nevertheless, for all practical purposes the chief executive does have this power and does make use of it more or less constantly. For many years the administrative departments have drafted revisions, amendments, or supplementary bills in matters which particularly concern them. These may be brought up directly through the kind offices of a friendly Senator or Representative, but they sometimes are routed via the executive office. Increasingly the President has gone beyond the point of sending in mere changes in existing or pending legislation—during the years immediately following 1933 almost every one of the many far-reaching congressional enactments originated in the executive office. Since that time there has been somewhat of a return to the earlier practice, under which individual legislators initiate bills, but an important precedent has been established. When a bill which has been drafted by the assistants of the President reaches one of the houses, it is perforce introduced by a friendly member, just as any

¹ The speech from the throne is prepared by the cabinet. Inasmuch as the cabinet prepares the government program and must be supported unless there is to be an overturn in government, it is possible to place more or less complete dependence upon it.

**Initiating
Bills**

other bill. Nor is there any special committee or procedure for such bills provided by the rules, but no one can doubt that they sometimes are accorded very special attention. Despite the traditions of Congress permitting free debate and the introduction of amendments, many of the presidential bills which came to Congress in 1934 and 1935 were steam-rolled through with no opportunity for amendments and very little debate.

At one time Congress was inclined to be quite jealous of its prerogative of drafting the major pieces of legislation. Recommendations were regarded as within the scope of the presidential power, but his tendering of complete bills covering a broad field was viewed with considerable suspicion and hostility. There is reason to believe that some congressmen continue to oppose the actual initiation of important legislation by the executive—even during the most prosperous period of the New Deal. Senators and Representatives frequently voted as the administration dictated but they did it with a smoldering sense of resentment. As a matter of maintaining itself against the executive branch which has for some time been in the ascendancy, this legislative psychology is easily understood.

Congressional Attitude toward Presidential Bills

Nevertheless, there seem to be weighty arguments for executive initiation of major legislation in the interest of the general welfare. The President should have a breadth of vision that no legislator is likely to attain, for his very position gives him a nation-wide picture as contrasted with the state or district narrowness of Senators and Representatives. This does not, of course, mean that congressmen are incapable of or do not have the information for a national point of view. It does, however, mean that all too often they vote in order to placate their districts and states or to satisfy a strong pressure group, even when their action is opposed to the best interests of the nation as a whole. Moreover, the administrative departments which are immediately under the chief executive have a direct experience in many fields which congressmen lack. Their day to day familiarity with the handling of certain public problems makes them peculiarly fitted to draft new legislation pertaining to their specialties.

Arguments for and against the Practice

Yet, on the other hand, administrative departments are not infrequently so near to a situation that they can scarcely see the forest for the trees. Again they have the psychology of "bigger and better"

programs and budgets, which if carried to extremes saddles the country with a very expensive and bureaucratic system. Consequently it would seem that the right of Congress to engage in debate over a reasonable period of time as well as the opportunity to offer pertinent amendments should not be abridged by any steam roller. Although the plea of haste is often offered as justification for ramrodding bills through Congress and although at times one cannot doubt the importance of prompt action, nevertheless there is considerable basis for a conclusion that this emergency technique has been abused during recent years. The government has paid little or no attention to matters of major importance for months and then suddenly decides that elaborate legislation must be rushed through. Last-minute action is frequently so ill-conceived and defectively planned that it affords little or no advantage; moreover reasonable foresight and responsibility could often obviate the necessity for it. Also the picture of one department trying to accomplish an end to which another department is directly opposed is not calculated to generate trust in government, yet that picture was commonplace during the years when Congress abdicated to the sprawling and uncoordinated executive branch. Altogether, while it is probably quite necessary and wise that the executive be able to plan legislation, it is equally important that Congress participate in producing its final form rather than merely rubber stamping what is delivered from the departments or the White House.

During those Elysian days when the United States found it easy to raise all of the money it needed for public expenditures and recurring **Budgetary** deficits and gigantic debts were unknown, the executive **Duties** had comparatively little financial planning to do. Of course his office required appropriations and the administrative departments nominally under his control accounted for most of the expenditure of public funds, but Congress undertook to be the general overseer. The experiences of World War I demonstrated among other things that a more responsible financial system was required. Congress recognized this when in 1921 it passed the Budget and Accounting Act, which placed the preparation of a budget in the hands of a Bureau of the Budget. The first directors of this bureau were nominally under the chief executive and, of course, consulted him in regard to general policies. Nevertheless, they were men of affairs¹ who had

¹ Charles G. Dawes was one of the first of these.

been accustomed to a large measure of independence and consequently did not look upon themselves as mere clerks of the President. When Franklin D. Roosevelt assumed office, he continued for a time the semi-independence of the budgetary office, but it was not long before he decided that such a situation was intolerable. Lewis W. Douglas, his budget director, resigned, when it became apparent that the President conceived of the Budget Bureau as his personal agency and for several years the bureau drifted along with an acting director and very little publicity. The President's Committee on Administrative Management recommended the placing of the Bureau of the Budget directly within the executive office. Despite the defeat of the general reorganization bill based on its 1937 report, this one feature was eventually authorized by Congress and a thorough reorganization of the budgetary machinery was undertaken. An administrator¹ rather than a man of affairs was appointed director; a notable increase in staff soon followed; and the budgetary office took on many functions that had not hitherto been performed.² At the present time, then, the preparation of a budget is carried on directly within the executive office of the President under policies which he has adopted.

During the first week of a new session the President transmits to Congress the tentative budget together with an explanatory message. The complexity of this budget is now such that even an elaborately organized Committee on Appropriations in the House of Representatives cannot ordinarily dissect it in complete detail. Changes are usually made before the budget becomes law, but they tend to be of minor importance as far as the appropriations for the regular agencies of the government are concerned. The influence of the chief executive in determining the amounts available for the operation of the various administrative departments is ordinarily almost decisive at present.

THE VETO POWER

A fifth function which the chief executive exercises in the field of legislation is so important that it requires more than a paragraph. The veto power is accorded one of the longest sections of the Constitution³ in contrast to other important matters which receive no mention at all or are disposed of in a few words. The men of 1787 followed this course because they felt that it was very essential to pro-

¹ Harold D. Smith was brought in from the Civil Service Commission in Michigan to take over this position. ² These are discussed in some detail in Chap. 26. ³ Art. I, sec. 7.

vide in detail for the exercise of such a power. They recalled only too well the troubles which had grown out of its irresponsible use by colonial governors; indeed there was some sentiment for omitting the executive veto entirely. However, the framers were impressed by the concept of "checks and balances," which necessitated a provision for some executive control over the process of lawmaking. Calling special sessions and sending messages permitted the President to exercise a certain amount of "check," but it was of such an indirect variety that it scarcely met the requirements of the system which they had in mind. Then, too, there was a realization that Congress might go to extremes in the exercise of its lawmaking power and that some sort of veto power was desirable. The outcome was the grant of a qualified veto power to the President.

The Constitution stipulates that every "bill, order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States."¹ It adds: "and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives."² It has been held that this does not apply to proposed amendments to the Constitution³ nor to concurrent resolutions which merely express the sentiment of Congress without having any force of law behind them. Except for votes on adjournment which are specifically exempted by the Constitution, all other acts of Congress are subject to the presidential veto. But it should be noted that the veto is definitely not of the absolute type, for Congress may override this presidential barrier by casting a two-thirds vote in favor of a controversial measure.

After the presiding officers of the Senate and House of Representatives have duly signed a bill or resolution, attesting that it has been passed by the necessary majority in their respective houses, a messenger delivers this bill or resolution to the office of the President. The chief executive may proceed to sign the bill—if it is of outstanding interest, sometimes in the presence of its sponsors in the Senate and House of Repre-

**General
Character
of the Veto
Power**

**Presiden-
tial Han-
dling of
Bills and
Resolu-
tions**

¹ Art. I, sec. 7.

² Art. I, sec. 7.

³ The first ten amendments were not submitted to the President for his signature. The Supreme Court remarked, although it did not directly rule, that the President's signature to proposed amendments is not necessary in *Hollingsworth v. Virginia*, 3 Dallas 378 (1798).

sentatives.¹ In many cases the President is not particularly enthusiastic about a bill or joint resolution and wishes to take no personal responsibility for it; on the other hand, he is not so opposed to it that he wishes to veto it. If he allows the bill to remain for ten days on his desk without any action and Congress has not in the meantime adjourned, the bill becomes law without his signature. In both of these cases the President then transmits the bill or resolution to the Secretary of State for promulgation and publication in the *Statutes of the United States*. If he deems a bill or resolution distinctly objectionable, he can make direct use of the veto power. In this event the President refuses to sign and returns the bill or resolution to the house of Congress in which it originated within ten days, usually with a statement of reasons why he refuses to approve.

Toward the end of a session numerous bills and resolutions are passed by Congress in an effort to clean up accumulated business. These go to the President in batches. If Congress adjourns "Pocket Vetoes" within ten days after the President receives these bills and resolutions and he takes no action, it is said that the bills or resolutions have been "pocket vetoed." A considerable number of these last-minute bills and resolutions fail to become law as a result of the inaction of the President. The chief executive may not be particularly opposed to them, but he does not want to take the responsibility of giving his positive approval, perhaps because he has not had the time to investigate. A period of ten days is not very long in which to decide what to do about three or four hundred congressional proposals² and it is probably expedient for a President to use the "pocket veto" generously.

For more than a century it was believed that no bills could be signed by the President after the adjournment of Congress, but in 1920 Woodrow Wilson successfully attempted to overthrow that precedent by signing several bills within the ten-day period specified by the Constitution.³ This extension of The Ten-day Provision

¹ A colorful ceremony sometimes takes place with newspaper photographers present to take photographs. The pen which the President uses to sign may be presented to a sponsor as a memento.

² See the case of *Okanogan Indians v. United States*, 279 U. S. 655 (1920). The court held that ten days does not include Sundays, that calendar rather than legislative days are intended, and that adjournment means the adjournment at the end of a session rather than the final adjournment of a Congress which takes place only every two years.

³ President Wilson received bills when he was in Europe in connection with the peace terms. It was held that ten days did not include the period elapsing between the dispatch

time, which was upheld by the Supreme Court by unanimous vote,¹ is of considerable advantage in that it affords the President additional time to decide what action to take. Ten days is none too long at best—indeed states sometimes permit their governors two or three times that period in which to dispose of their legislative work.²

The pocket veto is used quite frequently by Presidents, as we have pointed out above. No study has been made to indicate how chief

**Use of the
Veto
Power** executives compare on such a basis, but there must be not a little variation. It may be added that the statistics which relate to the use of the veto power by the several Presidents

do not include pocket vetoes. The early holders of the office used the direct veto very sparingly. It was not until Andrew Jackson assumed office that any considerable disposition to employ this control was evident³—and even including his vetoes there were just over fifty presidential vetoes from the establishment of the republic down to the Civil War.⁴ Recent Presidents have a more impressive record, although there has been little if any tendency to abuse the power. Grover Cleveland set a record up to his time by returning forty-two measures with explanations of his refusal to approve.⁵ McKinley, in contrast, found it expedient to veto only six bills and resolutions in his slightly more than four years in the White House. Theodore Roosevelt was responsible for forty-two; Taft for thirty; Wilson for thirty-three; Harding for five; Coolidge for twenty; and Hoover for twenty-one. Strangely enough, Franklin D. Roosevelt, despite his virtually absolute control over Congress during his first administration and his substantial influence since, has apparently broken all previous records.⁶ In comparison with state governors the presidential record is one of striking restraint, for the former frequently veto as many as 10 or 15 per cent of all bills and resolutions received and occasionally as many of the bill to the office of the President and his receiving of the bill in Europe. In other words he was allowed ten days in which to take action after he received the bill in Europe.

¹ In *Edwards v. United States*, 286 U. S. 482 (1932).

² Of course, state legislatures often pass a larger proportion of their bills at the very end of a session.

³ Jackson was the first President to veto because he objected to the contents. His predecessors had based vetoes only on conflict with the Constitution or defects in drafting.

⁴ The exact number was fifty-one.

⁵ This includes only the vetoes that were accompanied by messages. Cleveland vetoed several hundred private bills which called for pensions.

⁶ He had vetoed 120 bills and resolutions up to November, 1937. For an illuminating article on the use which Presidents have made of this power, see K. A. Towle, "The Presidential Veto Since 1889," *American Political Science Review*, Vol. XXXI, pp. 51-55, February, 1937.

as one-fourth or more. Even the most vigorous President has not approached a veto record of 1 per cent.

Perhaps more significant than the increased number of vetoes during recent administrations has been the policy of executive questioning of the wisdom of certain measures. The first Presidents based their few vetoes on an apparent conflict with the Constitution or on technical defects in the wording. The more recent holders of the executive office have not hesitated to veto bills that were perfectly constitutional and not at all defective in form but which have seemed to them to be contrary to the public interest. Thus Coolidge, Hoover, and Franklin D. Roosevelt all refused to approve bills which were aimed at giving bonus payments to the veterans of the First World War.

When the President returns a vetoed measure to the house of Congress in which it originated, there may be enough support to repass it by a two-thirds vote in both houses and thus override the veto. However, the pressure on Congress must be exceptionally strong to influence two-thirds of the membership, for Congress does not as a rule like to take that step. American Legions and Farm Bureaus have such powerful pressure machines that they can literally "snow under" Congress with telegrams, letters, and personal appeals, thus forcing it to override a veto. If Congress is particularly interested in a measure and feels that the chief executive has gone out of his way to be petty, enough resentment may be stirred up to muster the required vote. Yet Cleveland with forty-two vetoes was overridden only five times, while Theodore Roosevelt with the same number to his credit actually lost only once to Congress. Coolidge and Hoover had four and three vetoes respectively overthrown.¹ Franklin D. Roosevelt has found Congress recalcitrant on a few measures, but this has been an exceptional experience where vetoes were involved.

There are two proposals to modify the veto power which deserve attention. The first would make it easier for Congress to pass bills over a presidential veto, while the second would cause a notable extension in the President's authority. Inasmuch as some citizens believe that the President is already too powerful and inasmuch as the two-thirds requisite for passing over a veto is very difficult to obtain in practice, it has been suggested that Congress be permitted to cast aside a veto simply by

**Overriding
of Vetoes**

**Proposals
to Change
the Veto
System**

¹ K. A. Towle, *op. cit.*

repassing a bill with an ordinary majority. A few states, for example Indiana, allow such a simplified overriding of executive vetoes, it is argued, so why not extend such a scheme to the national sphere. Considering the limited use which the President has made of the veto power, there is far from an acute need for such a change—much less than in the case of states where vetoes are much more common. To what extent an easier requirement would cause more disregard of vetoes is a debatable question. Congress sometimes passes bills which it doesn't favor, simply to escape the intolerable pressure on itself. If overriding were made easier, greater responsibility would be loaded on Congress. Considering the fact that few vetoed measures have been widely appraised as meritorious, it seems very doubtful that relaxing the restrictions is desirable.

The second proposed change would add the itemic veto to the general form already in operation. Particularly in appropriation bills, the President is confronted with highly objectionable sections which have been the result of congressional "hijacking." In other words, a small group has demanded a concession as a price for supporting a general appropriation measure. The rank and file of congressmen have not in most cases favored the raid on the Treasury; but they have permitted it to sneak in, because they realized that the big appropriation bill has to be passed and that it would require a vigorous fight to pass it without the support of the clique urging the inclusion of some "pork." When the big bill comes to the executive office, the objectionable item may be glaring. Yet under the present veto arrangement there is no practical way to eliminate it—either the President must accept the whole measure or throw all of it out. If he vetoes the bill as a whole, it may cause great hardship in the case of thousands of government employees, for money can be paid out of the Treasury only on authority of Congress. If no provision has been made for a group of departments by the beginning of a new fiscal year salaries cannot be paid. If the President returns the bill to Congress, there is a possibility of having it modified in time for the new fiscal year, but that is always doubtful. As a result few Presidents have had the temerity to veto general appropriation bills, no matter how unjustifiable some of the items have been.¹ The

¹ Franklin D. Roosevelt after some deliberation did veto an appropriation bill providing money for the operation of the independent establishments because of objectionable items.

itemic veto would allow a President to strike out the objectionable section, while at the same time approving the bill as a whole.

Almost forty states now empower their governors to exercise the itemic veto in connection with financial measures.¹ There can be little question that a presidential itemic veto would result in substantial savings and, what is perhaps more important, obviate the misuse of federal funds. From a dollars-and-cents standpoint there is a great deal to be said in favor of this extension of the veto function. The chief objections come from two sources. In the first place, it is argued that Congress as the representatives of the people should be squarely confronted with financial responsibility and that adding an additional burden to the chief executive might be the straw that would break the camel's back of an already overloaded President. In the second place, those who are alarmed and frightened by the far-reaching powers which are already attached to the presidential office plead for no further enlargement. Admitting the savings that might ensue from the item veto, these critics allege that the price to be paid in deterioration of the American system of government would far outweigh any possible advantage. Franklin D. Roosevelt went so far in his budget message of January 5, 1938 as to ask Congress to give him the itemic veto over appropriation bills. The House of Representatives inserted a grant of this power in a general appropriation bill, but the Senate omitted it on the ground that a constitutional amendment would be necessary to bring about such a change.²

It is not at all uncommon for Presidents to threaten the use of their veto power in connection with important measures which are pending in Congress. Theodore Roosevelt is ordinarily given credit for initiating such a device—at least it fits into his “big stick” philosophy. His successors have made increasing use of it, frequently with good results, although in the case of bonus legislation not even a threat could achieve any results. But if the chief executive intimates that he is thoroughly opposed to a measure or particularly that he will refuse an entire bill because he

Threats of
the Use of
the Veto
Power

¹ In England all appropriation bills must be introduced by the cabinet. Professor H. J. Laski, in his *The American Presidency*, Harper & Brothers, New York, 1940, advocates rather strongly that the same system be adopted in this country. He points out that if congressmen could not seek appropriations the irresponsible use of public funds would be considerably limited. See pp. 230-231.

² An exhaustive article on the item veto under the initials V. L. W., entitled “The Item Veto in the American Constitutional System,” appeared in the *Georgetown Law Journal*, Vol. XXV, pp. 106-133, November, 1936.

cannot accede to the inclusion of certain provisions, it is quite within the realm of probability that the bill will be dropped or that changes will be made so as to obviate the objectionable portions. The Constitution has nothing to say about a threatened veto, but it is no more difficult to imply this device under the general veto grant than to imply the chartering of banks from the powers to tax, borrow money, and maintain an army. Whether it is fitting and in accord with the dignity of the office for a chief executive to make "threats" may be another question. It could be argued that the President is being thoughtful enough to save Congress future embarrassment and that he is merely giving notice rather than uttering a threat.

OTHER EXECUTIVE CONTROLS OVER CONGRESS

A chief executive can go far in influencing legislation if he is willing to work intimately with the leaders of Congress. The President, no matter how mediocre are his actual endowments, acquires great prestige from the exalted character of his office. If, then, he calls in the dozen or so men who are regarded as leaders of the Senate and House of Representatives, discusses his views with them, asks for their assistance, and gives them some of the credit for what is done, it is entirely likely that he will achieve concrete results. Professor Corwin¹ maintains that almost without exception the Presidents who have accomplished far-reaching legislative programs have made use of this strategy. Indeed he is so strongly impressed by the possibilities that he proposes a permanent arrangement under which these leaders would be either the sole members of the cabinet or at least share that honor with three or four of the most important administrative officials.²

Some of the most able chief executives have undoubtedly erred in ignoring the possibilities inherent in this informal teamwork. The classic example is perhaps Woodrow Wilson, who might have had his League of Nations proposal accepted had he been willing to forget his own position and cultivate the leaders in the Senate. Some would say that it is not fitting for a President to demean himself and his office by carrying on back-room negotiations with congressional politicians. And, of course, it

¹ See his book *The President: Office and Powers*, New York University Press, New York, 1940, p. 304.

² *Ibid.*, pp. 304-305. See also Chap. 15 above.

would not be proper for a chief executive to employ devious tactics in his contacts with the leaders of the House of Representatives and Senate. But the invitations to luncheons or dinners at the White House during which important public questions would be canvassed could certainly not be regarded as beneath presidential dignity. After all the President is not a king or a figurehead or a mere symbol of honor. Rather he is the American political leader. If he is to take an active part in guiding the nation he must come into contact with the members of the legislative branch, the judges, and the citizens. Considering the lack of any formal machinery under which joint effort on the part of the various branches of government may be organized, it seems very logical that the President should forget any fancied dignity and bend every effort toward meeting the problems that confront the nation. Certainly there is much less danger of totalitarianism when responsibility is shared than when the chief executive attempts to shoulder the entire burden himself.

Although President Franklin Roosevelt has occasionally himself remained aloof from Congress, he has usually been very active in cultivating it. Throughout most of his administration he has maintained a sort of liaison agent between the executive and legislative branches. For some time ex-congressman Charles West, nominally Undersecretary of the Interior, served in that capacity. Then ex-Senator Shermon Minton, holding a post as one of the administrative assistants, acted as go-between. The effectiveness of these personal agents depends to some extent on their personal relations with congressmen; hence they are usually former members of Congress who have wide acquaintanceships and also have the privilege of entering the floor of the houses.

The F. D.
Roosevelt
Record

In another connection¹ we have dealt with the patronage which the President has managed to retain despite all of the efforts which have been directed for more than half a century toward abolishing the spoils system. No one can dispute the significance of this patronage as a legislative control. The congressmen have supporters who ache for appointments and contracts; the President has a reasonable amount of these at his disposal; *ergo*, the members of Congress agree to meet the wishes of the President in return for concessions which he grants in the way of offices.

Patronage

In considering the role of the President in American life, it was

¹ See Chap. 14.

pointed out ¹ that the desire of the people for a leader confers on the presidency very great influence in all sorts of matters. Not the least of these is the legislative process. Congressmen are usually **National Leadership** very sensitive to large-scale pressure directed against themselves; if the President appeals to the people to support his legislative program, it is quite possible that this intense popular pressure will be forthcoming. Some chief magistrates have been more gifted in making use of this device than others—obviously a daring man who speaks with eloquence and is reasonably colorful will be more appealing to the people than one who is cold, cautious, and an uninspired speaker. When the patronage control breaks down and the formal powers of the office prove ineffective, Presidents usually resort finally to stirring up popular support which will in turn “put the heat” on Congress.

Several recent chief executives have appointed commissions to study and report on complicated public problems. Some of these have **Study Commissions** been attended by much fanfare and have issued recommendations which have received wide publicity. The Wickersham Commission on Law Observance and Enforcement, appointed by Herbert Hoover, included in its membership some well-known persons, investigated problems that were uppermost in the public mind, and made a report which led to vigorous discussion as well as some concrete legislation. Other commissions have not for one reason or another been anything like as much in the public eye and yet have produced reports which have received the attention of influential persons. The Reed Committee set up by Franklin D. Roosevelt to examine the public personnel system, particularly as it related to professional appointments, was certainly not known to the man on the street; only a summary of its findings was made public in 1941; yet there is reason to believe that it may have considerable influence in determining future legislative as well as administrative action.

The report of the President's Committee on Administrative Management was largely embodied in the widely publicized reorganization bill of 1937 and a part of its proposals finally became law in 1939. One of its successful suggestions was that there be included in the executive office of the President a permanent fact-finding commission: the National Resources Planning Board, which should be constantly engaged

¹ See Chap. 14.

in carrying on studies of a somewhat technical nature on a wide variety of subjects. Opposition in Congress made the future of this agency somewhat uncertain for a while and it is still early to assess its importance in influencing legislation. It may be added that many of its studies are not primarily intended for that purpose.¹ The Committee on Economic Security, set up by President Roosevelt in 1934, undoubtedly focused the attention of large numbers of people on old-age dependence and other related problems and its report had substantial influence on the basic Social Security Act of 1935. Committees appointed by Franklin D. Roosevelt to study the two tremendously important problems of public health and public education have called forth wide-spread interest and resulted in reports calling for the expenditure of hundreds of millions of dollars annually. However, thus far little or no concrete action has resulted. Congress is inclined to regard experts with suspicion, thus placing the burden of justifying their existence on fact-finding commissions.

CONTROLS EXERCISED BY CONGRESS OVER THE PRESIDENT

Thus far we have assumed that the checks which the Constitution provided in part have operated only to the advantage of the President and at the expense of Congress. The philosophy underlying the system of checks stresses their reciprocal character. Hence we must pause before we pass on to another chapter to note controls which the legislative branch can exercise over the executive. These will all be discussed in more detail under the powers of Congress,² but they should be kept in mind in this connection also.

Perhaps the greatest dependence of the executive on the legislative branch is in connection with the purse strings. No money can be paid out of the public treasury except on the authorization of Congress; the executive has need for enormous sums of money for its many projects; therefore, Congress can at times dictate to the President. The budget-making authority now conferred on the President has diminished the actual financial control of Congress to some extent, but even so it remains of considerable importance.

The Constitution gives Congress the power to enact laws which regulate to a considerable extent the duties of the chief executive.

¹ See, for example, its excellent studies on urbanism.

² See Chap. 19.

He has from the Constitution itself the appointing power in general, but the laws passed by Congress, in setting up offices give to him the specific appointments. Virtually all of the major projects drafted by a chief executive involve passing laws to create the necessary machinery. Here again the President must wait upon Congress before he can go ahead.

The Senate has the authority to confirm the appointments of the President and to ratify the treaties which he negotiates with foreign powers. Needless to say, the exercise of these powers by the Senate can cause a President the greatest worry and even embarrassment. While the Senate is disposed to confirm the great majority of appointments and treaties submitted by the President, it is fond of investigations and delay. When it refuses outright to ratify an important treaty, such as that negotiated by President Wilson at the conclusion of World War I, the results are, of course, far-reaching. To point to a fourth control, it may be noted that the President does not have a monopoly on commissions by any means, for Congress is itself rather fond of setting up such agencies. These may be more partisan than the executive committees, but their findings are often hailed by large numbers of critics. For example, the Dies Committee, which has for several years been investigating radical and subversive organizations and activities in the United States, has charged certain of the New Deal officials as falling within that category. President Roosevelt has displayed irritation, but he has perforce had to grin and bear the aspersions because of the public support behind the Dies Committee. The congressional investigation of T.V.A. in 1939 ¹ may be cited as another example of legislative action aimed at executive control. Finally, in extreme cases the House of Representatives may vote articles of impeachment against a President which if upheld by the Senate will lead to his removal from office.

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CHAPTER XVII

THE HOUSE OF REPRESENTATIVES

ONE of the most perplexing and controversial questions which the framers had to face involved the exact nature of the legislative branch of the government. Of course, every delegate appreciated the necessity of a lawmaking body, but should such an agency be bicameral or unicameral? Should the large states and small states all have the same legislative representation or should some attempt be made to equalize the representation with the size of the state? What about the method of choosing members of the legislature? Ought they be elected directly by the voters or would it be more advisable to set up a system of indirect election? All of these and other points were raised in the convention and provoked heated arguments—so much so that at times they seemed likely to wreck the efforts of the delegates perspiring through a hot Philadelphia summer. Eventually it was possible to arrange compromises which, although not entirely satisfactory to some of the states, nevertheless saved the day.

One of the most momentous decisions made by the convention of 1787, often referred to as the “great compromise,” relates to the organization of the legislative branch. The small states, very fearful lest they be engulfed by their larger neighbors, insisted on an arrangement under which their interests would be protected—indeed they wanted an equal voice in the lawmaking body. Not unnaturally the large states could not see any justice in this claim. They had in certain cases several times as many inhabitants; they would be expected to bear a heavier share of the financial burden. Then why should they not have more to say about the operation of the government? The “great compromise” made it possible for both small and large states to feel that they had won their point. The legislature would be a bicameral body; the lower chamber, constructed on the basis of the claims of the populous states, would have proportional representation; and the upper chamber, organized to satisfy the small states, would represent the states equally whether large or small.

**Bicameral
versus Uni-
cameral
Legislature**

It is generally conceded that this arrangement has worked out reasonably well, although our Congress has, of course, its defects, just as any other agency of government. The equal recognition of small states means that the Senate can theoretically be controlled by a small fraction of the population—perhaps one-fifth; it also gives to six states with approximately fifty million people only twelve Senators.¹ Nevertheless, there has been little evidence of divisions on major questions based on small-state versus large-state considerations. Both types of states stand together if they are primarily agricultural in character; similarly states irrespective of size generally see eye to eye if they have the same industrial interests. All in all, the bicameral system, embodying as it does in Congress recognition both of population and of state integrity, has been advantageous. It is significant that the movement toward a unicameral state legislature has not been directed toward a similar goal in the case of the national government.

MEMBERSHIP IN THE HOUSE

Inasmuch as the House of Representatives is based on population, its size is not specified by the Constitution beyond the point of stipulating that there shall not be more than one member for every thirty thousand people.² Congress has from time to time fixed the exact number of members by law, following the general principle that as the population has grown the size of the House should be enlarged. The first House of Representatives had only sixty-five members; that number gradually grew to one hundred, two hundred, three hundred, until for three decades now it has been stationary at 435. In spite of the notable expansion in seats the number of people represented by a single member has grown from approximately thirty-three thousand in 1793 to slightly over three hundred thousand in 1940.

By 1910 the membership had become so large that widespread sentiment against additional enlargement developed. In that "horse-and-buggy" period, when amplifying systems were still mere visions of creative geniuses, only the "leather-lunged" representatives could make themselves heard by their colleagues. More than that, the House had become unwieldy and

¹ The states of New York, Pennsylvania, Illinois, Ohio, Texas, and California have about 40 per cent of the entire population, but only twelve Senators.

² Art. I, sec. 2.

cumbersome.¹ Nevertheless, after the census figures of 1920 became available, considerable pressure manifested itself for a further increase to 470. The House of Representatives went so far as to pass a bill which would authorize this enlargement, but the Senate, more removed from the actual scene of battle, refused to concur. Despite all efforts to reach a decision, no action was taken during the 1920's to carry out the constitutional mandate stipulating a reapportionment every ten years. The eleven states which had not added enough population to keep their 1910 allotment of seats under a reapportionment were especially indignant at the very mention of any step which would deprive them of seats. No state had ever had to take a reduction in representation and a precedent of more than a century was difficult to break.

Nevertheless, by 1929 Congress felt impelled to take steps that would prevent a continued disregard of the Constitution during the 1930's.² It was agreed that the size of the House of Representatives should be fixed at 435 unless subsequent action changed that number. Furthermore, it was specified that, unless Congress otherwise reapportioned the seats, the Bureau of the Census computation of the number to which each state is entitled on the basis of the decennial census should become effective in the second succeeding Congress. Congress did not otherwise apportion following the 1930 census and therefore in 1932 a new distribution went into effect which caused twenty-one states to lose from one to three seats each and eleven states to gain from one to nine seats each. The act of 1929 left certain technical points unsettled, with the result that subsequent legislation was passed in 1940 which outlined the exact method the Bureau of the Census should use in computing the seats to be assigned to the various states. Following the taking of the 1940 census proposals were again made to increase the size of the House so that certain states would not be obliged to surrender seats already held. However, it appeared probable that no action would be taken on these bills and that the apportionment calculated by the Bureau of the Census would be put into effect automatically in 1942.

The plight of some of the older states is perhaps sad under an arrange-

¹ The unwieldiness of the House of Representatives is not entirely due to its large size. European legislative bodies have operated fairly smoothly with six hundred or more members. The lack of leadership in the House of Representatives enters into the situation.

² For additional discussion of this act, see Z. Chafee, "Congressional Reapportionment," *Harvard Law Review*, Vol. XLII, pp. 1015-1047, June, 1929.

ment which keeps the size of the House of Representatives fixed at its present number. Of course, no state likes to have it proclaimed from the housetops that it is in the ruck of the race among the states. Nevertheless, the present scheme of more or less automatic reapportionment after each census is distinctly advantageous. Congress itself is too much involved to attend to the details every decade, while the Bureau of the Census is quite capable of impartially computing the distribution. The reservation which permits Congress to intervene if it concludes that some other allocation is preferable safeguards the process.

The Constitution goes into considerable detail in prescribing the rules that regulate membership in the House of Representatives. The Fourteenth Amendment provides that "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."¹ It then proceeds to order that representation shall be proportionately reduced in the case of those states which deny or abridge the suffrage of citizens who possess the proper age qualifications and have not engaged in rebellion or crime.² This mandate has never been observed, despite the disenfranchisement of Negroes by certain states, and at present it must be considered more or less of a "dead letter." Those citizens who are permitted to vote for members of the most numerous house of a state legislature must be accorded the same privilege in the case of members of the House of Representatives.³ Every state is entitled to at least one representative irrespective of its population.⁴ Elections are to be held "every second year by the people of the several states"⁵ for the purpose of electing Representatives. "The times, places, and manner of holding elections shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations."⁶

The formal qualifications which a candidate for the House of Representatives must offer are not onerous. Beyond prescribing a minimum age of twenty-five years, citizenship in the United States of at least seven years, and residence in the state from which he is elected,⁷ the Constitution leaves the field open to all comers. Nevertheless, custom and usage have ordained that a

Constitutional Provisions in Regard to Membership

Qualifications of Members

¹ Sec. 2.

² Sec. 2.

³ Art. I, sec. 2.

⁴ Art. I, sec. 2.

⁵ Art. I, sec. 2.

⁶ Art. I, sec. 4.

⁷ See Art. I, sec. 2.

candidate who expects to be taken seriously shall possess additional qualifications. An age of twenty-five years would constitute a serious handicap in all except the rarest instances; indeed an age of under forty might very well serve to militate against election. Representatives average from just under fifty to approximately fifty-five years of age, depending upon the particular Congress,¹ and thus are for the most part of middle age. Citizenship of only seven years on the part of a particular candidate would certainly not be regarded as acceptable by most voters. Merely being "an inhabitant of that state in which he shall be chosen" is not a very adequate recommendation in the case of most candidates, for there is a psychology in many political circles which causes newcomers to be regarded with suspicion and considers residence of fifteen or twenty years in a locality temporary sojournment. Of course, political prominence is virtually a *sine qua non*, although occasionally relatives of deceased politicians may be given the mantles of their departed, and political machines may designate puppets who have never before been in the public eye. But these exceptions only go to prove the rule that successful candidates are those who have long taken an active part in state and local politics.

Occupational, racial, social, and religious qualifications may or may not be expected, depending upon the time and place. Lawyers far outnumber other occupational representatives in the House of Representatives, although it may be noted that a considerable proportion of those who label themselves as "lawyers" have not practiced for years if they ever did much in that profession—they are in reality professional politicians. The first congressional district of Illinois has for some years always elected a Negro to the House of Representatives, while other districts have been fond of Irish, Italian, and Jewish sons. However, many districts have no definite preference, although they might refuse to accept candidates of unconventional racial background. During the Ku Klux Klan revival of the 1920's religion came to the fore as a factor in selecting congressmen; under ordinary circumstances, however, it is much less significant, although there are districts where Roman Catholic faith would be a decided advantage or a heavy handicap at any time.

The most important qualification which has been laid down by

¹ During the present century a computation of ages as reported in the *Congressional Directory* reveals a range of from approximately forty-nine to just over fifty-five years as an average.

custom relates to residence of Representatives. The Constitution requires only legal residence in the state, but that has long since been modified to mean residence in the congressional district. Custom has been so insistent on this identification with a district that it is now unheard of for any other choice to be made—at least as far as technical residence is involved. It is only fair to point out that many Representatives spend little or no time in their districts after they are elected and in some instances finally feel so established in Washington that they acquire permanent residences there. But let a candidate not even nominally from a district dare to seek the local seat and one might suppose that homicide or treason had been committed. Even after election opponents sometimes make capital out of the residence question—the seat of James M. Beck, the vociferous foe of bureaucracy in government,¹ was challenged on the ground that he had spent much of his time away from Philadelphia attending to legal business in New York City.

There is marked difference of opinion as to the validity of the strict rule ordained by custom. It has been argued that the requirement of local residence makes for a mediocrity in Congress which not only hampers its work but is also embarrassing to the general reputation of the United States. Moreover, it is pointed out that urban centers, which may have a number of promising candidates, find it difficult to bestow adequate recognition on the various claimants, while rural districts may not have a single candidate who has suitable background for effective service as a representative. On the other hand, it is maintained that only local residents can understand the psychology and know the interests of the people of the district. There is probably room for a difference of opinion on this point, but it can scarcely be doubted that the requirement has contributed to a situation which permits some districts virtually no representation at all in Washington. When men of no training, no aptitude, and no character are chosen by districts as Representatives, it is for most practical purposes as if the seats were allowed to remain vacant. Of course, rural districts have no monopoly on such Representatives. Indeed it may well be that the lack of representation itself is more than a matter of residence. Where there exists a tradition that the position of Representative should be passed

**District
Residence**

**Should
District
Residence
Be Re-
quired?**

¹ His *Our Wonderland of Bureaucracy*, The Macmillan Company, New York, 1932, received a great deal of attention.

around at frequent intervals, there is likely also to be lack of effectiveness—it is literally impossible for any person to become sufficiently familiar with the complicated process of doing business in the House of Representatives in less than half a dozen years. Then, too, another contributing factor is the concept of a Representative as an automaton or a puppet in a Punch and Judy show who will respond to the various strings that are pulled but who will have no ideas or indeed no mind of his own.

After the states have been assigned a certain number of seats in the House of Representatives, it becomes necessary for them to divide themselves up into that number of congressional districts. This is supposed to be done promptly under a constitutional stipulation that each district shall include approximately the same number of inhabitants. Most of the states do redistrict with reasonable celerity, but there are a few that consistently ignore the constitutional mandate. Illinois, for example, has not seen fit to revise its districts since 1901, although the number of seats assigned to it has increased. When a state fails to redistrict itself after additional seats are apportioned it, Representatives-at-large are necessitated.¹ Thus voters choose their district Representatives and then proceed to help in selecting one or more Representatives from the state at large. If the state has lost seats, it is especially imperative that a prompt redistricting be accomplished, for otherwise the sole alternative will be electing all of the Representatives at large from the state.

One of the most serious results of the failure of states to redistrict themselves every decade is a striking disparity in population among the various districts. Illinois, for example, maintains congressional districts in the metropolitan region of Chicago which include within their boundaries something like 450,000 people. At the same time, it continues downstate rural districts with about 150,000 inhabitants. New York had as recently as 1933 one district with 799,407 people and another with 90,671. Thus, despite the democratic traditions of the country and the mandates of the federal and state constitutions, Illinois and New York actually permit rural residents in certain cases to have several times the voice in the national House of Representatives that some of the urban dwellers have.

¹ There have recently been ten congressmen-at-large from six states having more than a single seat.

Fortunately the above situations are extreme, but it is not at all uncommon to find districts which are more than a little out of line. The hostility which rural areas display toward cities accounts for much of this inequality, for with urban areas growing much more rapidly than rural areas prior to 1930 there was no disposition on the part of the latter to yield to the former their rightful share of authority. Because urbanization is fairly recent, rural sections still control the legislatures of many states and have illegally prolonged their domination even after urban residents have become a majority. There is no adequate machinery to compel the ironing out of these inequalities. Appeals have been made to the courts—even to the Supreme Court of the United States—but with no results, for the courts have ruled that such matters are political and do not fall within their jurisdiction. Congress could act if it chose by refusing to seat Representatives from those states which transcend the constitutional prescription. However, Congress is not fond of dealing with problems the solution of which would lead to resentment by local groups. Hence, nothing is done to correct the situation.

The task of dividing states up into congressional districts is entrusted to state legislatures, which are, of course, partisan in character. Therefore, it is not strange that the dominant political **Gerrymandering** party in a particular legislature will frequently seek to arrange a division that will work to its own selfish advantage. This practice is a very old one and not confined to congressional districts. The term itself is supposed to be derived from the fondness that Elbridge Gerry of Massachusetts had for such a device. An observer, who was asked whether he did not think a map of Massachusetts showing the boundaries of the districts suggested a salamander, quickly replied that he saw there a “gerrymander” and the designation has been commonly used since. Many people have the impression that the purpose of the gerrymander is simply to secure for the dominant party the majority of the seats in a congressional delegation or in a state legislature. Actually the purpose goes beyond that point, for a leading party except in very uncommon circumstances would have a majority of the seats by any arrangement. Under the gerrymander the party in power gets not only the larger part of the seats but a lion’s share.

If the population of a state were uniformly divided in every nook and corner in party affiliation, it would be impossible, indeed unneces-

sary, to devise any system of districts which would confer undue advantage. As a matter of fact, under a uniform distribution of 1,310,000 Democrats and 1,305,000 Republicans throughout a state, the Democrats would elect all of the Representatives. What happens in many states, however, is that there are Republican islands in a Democratic state or vice versa. Perhaps the cities will be Democratic, but the rural areas will be Republican. Under an equitable arrangement, both parties would share the seats, with the dominant party winning the larger number. But the latter wants more seats than would be forthcoming under a fair scheme; consequently it seeks to put the minority strongholds together into as few districts as possible. These districts will, of course, elect minority congressmen by handsome majorities, but the remainder will be carried by the majority party by small margins.

For many years before 1929 the national reapportionment acts stipulated that all districts must be made up of contiguous territory—this provision resulted in the most bizarre-shaped districts, for the minority strongholds had to be joined together by narrow strips of territory. Either intentionally or unintentionally Congress omitted the contiguous requirement from the 1929 act and the Supreme Court later held that Mississippi could therefore with impunity set up seven districts each made up of pieces of territory which were not joined together even by “shoe-strings.”¹ Apparently the maps of the future will not suggest “’manders” either of the salamander or gerrymander variety, but the broken-up districts will be scattered to the four corners of the state. However, the lack of minority representation will, if anything, be accentuated.

Members of the House of Representatives are chosen at general elections which are also used for the selection of state and local officers.

Consequently the details regulating these elections are adopted by the forty-eight states and hence vary from state to state. Nevertheless, Congress has taken some advantage of its constitutional right to legislate as to the “times, places, and manner” of holding these elections.² Since 1872 it has required that Representatives shall be selected through the use of secret ballots; the following year it added a stipulation fixing the first Tuesday after the first Monday in November of even years as a uni-

¹ See *Woods v. United States*, 287 U. S. 1 (1932).

² Art. I, sec. 4.

form election day in all of the states with the exception of Maine. Under a ruling of the Supreme Court in the *Newberry* case ¹ Congress had no right to lay down any rules in regard to the nomination of Representatives, for that was reserved to the domain of the states, but in 1941 the Supreme Court reversed this stand and paved the way for congressional action.² Federal regulations restrict the total campaign expenditures, exclusive of personal expenses, to a maximum of \$5,000. Finally, Congress has made corruption on the part of election officials a federal offense, punishable by fines or imprisonment, even though the election officials are state appointed and compensated.

Occasionally there will be some uncertainty as to who has been the victor in a congressional race. The voting may be so close that a change in a handful of votes would affect the results. Or **Disputed Elections** it may be alleged that wholesale frauds have made an honest election impossible or switched enough bona fide ballots to transform a defeated machine candidate into an apparent victor. The Constitution provides that "Each house shall be the judge of the elections, returns, and qualifications of its own members," ³ and thus confers jurisdiction over these disputed elections on the House of Representatives. The House makes the local election officials responsible for ordinary recounts of the ballots and stipulates that a candidate who believes that he has been elected despite the official returns shall exhaust the immediate remedy before bringing his case to Washington. When there is some question as to who has been elected, the House sometimes permits the apparent winner to take his seat, pending action by the committees on elections. Again the evidence pointing to fraud will be so glaring that neither claimant will be seated until it has been decided what final action to take.

The House of Representatives maintains three committees on elections which are charged with investigating these disputed elections. These committees receive the charges made by the con- **Com- mittees on Elections** testing candidate, examine evidence, hold hearings, and sometimes send agents to conduct personal investigations on the spot. When one of these has reached a decision on a case referred to it, it makes an appropriate recommendation to the House as to the disposal of the case, which recommendation ordinarily con-

¹ See *Newberry v. United States*, 256 U. S. 232 (1924). This was a five-to-four decision.

² See *United States v. Patrick B. Classic et al.*, 85 L. Ed. 867 (1941).

³ Art. I, sec. 5.

trols the final action of the House as a whole. There is some evidence that partisanship enters into the committees' reports, especially when party strength is evenly divided and when the person whose election is contested is a faithful member of the majority party. Nevertheless, there are cases in which the fraud has been so obnoxious that not even the party members on the committee on elections find it possible to support their brother.¹

Although the President holds office for four years without reelection and Senators enjoy even longer terms, Representatives must stand before the voters every two years. It was the hope and intention of the forefathers that frequent elections would keep the congressmen closely in touch with public sentiment and thus lead to more representative government. Doubtless the short terms do have some effect of that kind. On the other hand, two-year terms oblige the Representatives to spend an inordinate amount of their time and energy building up political fences and campaigning for reelection. In many cases the outcome of an election is so close that a very little vote shifting will mean subsequent defeat. A congressman is usually first of all interested in his own political future and deems it prudent to take precautions that will assure success at the polls. If his district customarily swings from one party to the other, a Representative may know that it will require his most skillful efforts if victory is to be won at the next election. Consequently he may start at once after he takes his seat in Congress to lay plans for the primary election, which in some states is scheduled slightly more than a year after he goes to Washington.

Except where members virtually "own" their districts, there is a premium placed upon personal service by the short terms. There is not too long a time available in which to demonstrate one's effectiveness as a Representative—nothing like the six years permitted a Senator—so one must bend every effort to get jobs, contracts, and all sorts of personal favors for individuals, firms, and associations at home. This all requires time and energy, even with an efficient secretarial staff. It should be obvious that most efforts of this character detract from the attention which a Representative can give to the extremely important pending bills. After all, the congressman reasons, the fate of the nation may be important,

¹ For example, James J. Butler, the son of Boss Butler of St. Louis, was refused a seat under these circumstances.

but it is not likely to be affected by inaction as immediately as is my own fate at the polls. Especially where there exists a tradition of "passing around" the salary and perquisites that seem so handsome to the residents of many districts, the two-year term contributes to the lack of familiarity with the procedure frequently observed among newcomers to the House. The people at home do not realize that it requires four or six years at least to become reasonably acquainted with the "ropes"—they think only how nice it would be to have an annual salary of \$10,000 and how selfish it is for one man to want to enjoy such blessings for an extended period.

Finally, the two-year terms play a part in bringing about deadlocks in which the President is on one side of the political fence and Congress is on the other. The voters rarely elect a President of one party and at the same time send to Washington Representatives of another. But in the off-year elections, when a President is not elected, they may imagine it desirable to change the local congressman. So enough opposition congressmen are elected to swing the balance of power to the party which has been in the minority, while the executive branch remains in the hands of the formerly dominant party. This was the situation during the last two years of both the Wilson and Hoover administrations. Needless to say, it made for division, delay, and deadlock. A four-year term for Representatives coinciding with that of the President would go far to prevent some of these faults, although it might result in a House less closely in contact with the rank and file of the people.

The salary of Senators and Representatives is fixed at a uniform rate by their own action. Until just before the Civil War they drew no regular salary but only a per diem allowance, for there was somewhat of the psychology still prevailing in England that considers legislative office a public service.¹ Starting out at \$3,000 per year at that time, the remuneration has gone up by degrees, until in 1925 it reached its present level of \$10,000. In addition, there are numerous perquisites which may in certain cases be used to implement the salaries. For example, travel allowance of 20 cents per mile on a round-trip basis is made, which in the case of the Pacific Northwest Representatives runs to more than \$1,000. Secretarial

¹ Members of the House of Commons receive the equivalent of about \$2,000 per year as an allowance but almost no perquisites. Members of the House of Lords are not paid at all.

assistance is provided to the extent of \$6,500 per year; although there is some opprobrium attached thereto, some Representatives keep this in the family by hiring their wives and children as nominal secretaries. Free telegraph and telephone service is also very helpful, especially when Representatives live at a considerable distance from the national capital and wish to communicate regularly and at length with their constituents. There are extreme cases in which whole books have been sent at government expense over the telegraph wires.

Likewise, the franking privilege permits Representatives to send their official mail without the payment of postage and this has been generously interpreted to include almost every conceivable object, even trunks, household effects, furniture, and so forth. Some congressmen abuse the franking privilege so greatly that they have been accused of turning it over to pressure groups—thus making it possible for the latter to flood the country with hundreds of thousands of propaganda pamphlets without the heavy expense of postage. A generous allowance is made for stationery, which may be collected in cash when it is not used up in office supplies. Finally, Representatives not infrequently see the world at government expense under the guise of investigating committees. Thus in 1940 one group visited Central America and another went to Panama, while in 1941 a subcommittee of the Committee on Appropriations decided to tour South America for the purpose of visiting the embassies, legations, and consulates for which they were asked to appropriate money. Of course, a certain amount of good may be accomplished by these visits, but the primary motive in many cases is pleasure rather than official business.

It may appear from the above paragraph that Representatives seriously abuse their official positions—and some of them certainly do. The initial salary seems munificent to the rank and file of the citizens, who manage to get along on less than one-fifth as much; but expenses in Washington are high. Something can doubtless be saved on the travel allowance, even after their families have been transported. The franking privilege is far too generally abused. In comparison with the members of most other legislative bodies, our Representatives are handsomely treated—indeed in general they deal with themselves the most generously of any legislators throughout the world. Nevertheless, their personal and election expenses are high; they work hard as a rule; and

The Franking and Other Privileges

Adequacy of Congressional Emoluments

they contribute to the welfare of the country. Offhand it might seem that their \$10,000 is excessive compared with the equivalent of about \$3,000 allowed to members of the German Reichstag. But the German legislators spend only a few hours a year in attending sessions and on those occasions handle so little business that they have been described as the "highest paid male chorus in the world."¹ Considering the services rendered, the salary paid in the United States is below that offered by the Third Reich.²

Representatives have no criminal immunity of importance, since they are liable to arrest for treason, felonies, and breaking the peace. On the other hand, their immunity in civil cases is fairly broad. They cannot be arrested coming to, attending, or going from a session of Congress in connection with civil matters, nor can they be subpoenaed as witnesses in civil cases. They cannot be held liable in court for what they say on the floor of the House, although the House itself may strike out of the record what they say, censure them for improper speech, or even in extreme cases deprive them of their seats. A few Representatives take advantage of their freedom of speech and make the most sensational and unfounded charges against citizens or business organizations, which, of course, have no remedy. The House is reluctant to take any action in these instances, at least beyond a mild reproof. Innocent victims feel that some safeguard should be set up to make this outrageous villification impossible, but it is difficult to impose any restriction which would not interfere with legitimate expression of opinion.

**Privileges
and Im-
munities of
Members**

ORGANIZATION OF THE HOUSE

Inasmuch as all of the Representatives are elected for two-year terms which begin and end at the same time, it is necessary for the House of Representatives to organize every other year. Actually there is less change than might be supposed, for the body of rules that has been developing for well over a century continues in effect except

¹ See J. K. Pollock, *Government of Greater Germany*, rev. ed., D. Van Nostrand Company, Inc., New York, 1939, p. 79.

² Numerous "revelations" have been made of the shortcomings of Representatives. The column of Drew Pearson and Robert Allen, entitled "Washington Merry-go-round," not infrequently airs the sins. See also R. Clapper, *Racketeering in Washington*, L. C. Page & Company, Boston, 1933; and W. P. Helm, *Washington Swindle Sheet*, Albert & Charles Boni, Inc., New York, 1932.

for occasional modifications; the officers usually remain the same unless there has been a shift in parties or death has caused vacancies; and enough of the leaders are usually reelected to enable the committee system to continue with minor replacements.¹

For many years the House of Representatives convened every year in December. In the even years a so-called "short" session was begun which had to terminate not later than the fourth day of the following March, while in the odd years a "long" session started out to continue until late spring, summer, or even fall, depending upon the pressure of business. The first of these sessions was characterized as a "lame-duck" session because some of the members who sat had already been notified by the voters at the November elections that their officeholding would not be continued. The Representatives-elect who had been named to succeed them would, under this old arrangement, not actually sit for approximately thirteen months after their election. It was obviously not particularly rational to have defeated Representatives make laws and vote appropriations while the Representatives-elect were cooling their heels. The Twentieth Amendment took cognizance of the evils inherent in this situation by fixing January 3 of the odd years as the date when the new terms should begin and by specifying that the House of Representatives should assemble on that date unless other provision were made by law. Inasmuch as Congress has not seen fit to set any other date, the House of Representatives now convenes every year on January 3.²

With the terms not expiring for two years, there is no reason for short and long sessions and hence no distinction is now made on this basis. The session held in the even years at four-year intervals is practically somewhat more limited than the odd-year sessions because of the national party conventions; while those scheduled for the in-between even years are likely to be cut short by the preparations which Representatives must make for re-election. In times of national emergency the House may not get through until fall,³ thus permitting only a brief breathing spell before

¹ The proportion of new Representatives varies from time to time. The turnover during the period 1790-1924 averaged 44 per cent every two years. See *American Science Review*, Vol. XXVIII, August, 1934, pp. 632-642.

² If this date happens to fall on Sunday, January 4 is substituted.

³ In 1941 it was late in December before adjournment took place. With a new session beginning early in January, the House was for all practical purposes in continuous session.

the next session begins, but otherwise adjournment is some time between June and August. It is possible for executive (or secret) sessions to be held if the exigencies of the times demand, but with rare exceptions all sessions of the House are of public character.¹

When the House of Representatives assembles on January 3 of the odd years, it must go through certain preliminaries before it can begin its routine duties. The clerk of the last House calls the roll of the members, prepared on the basis of the certificates of election which they present as evidence of their claim to a seat. A permanent set of officers is then formally chosen, although the actual choice has been made beforehand. In case there has been no overturn in party control, the officers of the former session are usually continued in office, unless retirements or resignations have made vacancies. In any event, the slate of officers—the Speaker, clerks, sergeant-at-arms, and so forth—has been prepared by the leaders of the majority party and ratified by the majority caucus before it is submitted to the House itself for formal acceptance.² The oath of office is administered to all members, whether they have served in the House before or not, *en masse* rather than individually because of the time element. The rules of the last session are adopted, subject to changes that may later seem desirable. Vacancies are filled in the committees as a result of party conferences. Having gone through these motions, the House, after conferring with the Senate, notifies the President that it is ready to receive any communication which he may desire to make to it. When the presidential message has been delivered in person or read by a clerk, the House is then ready to proceed with regular business.

The rules of the House of Representatives have grown up over a lengthy period and are at present so complicated that they are quite confusing to laymen—and even to members of the House who have had only a term or two of service. Some of the rules have come down from the English Parliament and are hoary with age; others have been set by the Constitution itself. The House itself has from time to time drawn up regulations which seemed wise; speakers and chairmen of the committee of the whole have made numerous rulings on controversial questions. Finally, the House has

¹ There is nothing in the Constitution to prevent secret sessions, but the House from the beginning has seldom resorted to them.

² The Speaker is first elected; then the other officers as a group.

adopted the *Manual of Parliamentary Practice*, drafted by Thomas Jefferson, to apply to those cases not otherwise provided for. The basic rules alone, leaving out the *Manual*, the constitutional provisions, and the rulings of speakers and chairmen of the committee of the whole, run to more than two hundred printed pages. The rulings of speakers and chairmen have been assembled in eleven printed volumes of huge size.¹ It is no wonder that not even the Speaker himself, despite his lengthy service in the House, can trust himself to declare what the rules are on any given point. Consequently the House employs two experts in parliamentary procedure, one of whom is invariably in attendance at the arm of the Speaker during sessions.² Members gradually become acquainted with the fundamental rules and can make their influence felt, but it usually requires at least four years to acquire even reasonable familiarity.

One may well inquire why the House of Representatives condemns itself to such a staggering burden of rules. Robert Luce, long a member of the House and a leading authority on legislative procedure, has stated that "Lawmakers must themselves be governed by law, else they would in confusion worse confounded come to grief."³ Of course, everyone will readily agree that a certain number of rules are required in order to (1) provide for the orderly conduct of business, (2) prevent undue haste in disposing of far-reaching measures, and (3) protect the rights of the minority party. But the question, on which there is some difference of opinion, is whether so many and such complicated rules are essential. In theory, there is a great deal to be said against a system of rules which condemns numerous members to impotence because of unfamiliarity with them. Moreover, the amount of time consumed in carrying out the rules is a heavy drain. Mr. Luce, who is not given to exaggeration, believes that a revision of the rules would permit the session to be "reduced in length one quarter, or a quarter more work could be turned out, and in either case the product would be better."⁴

Proponents of the present cumbersome rules argue that the House of Representatives would scarcely be able to function at all were it

¹ Eight of these volumes were prepared by Asher C. Hinds under the title *Parliamentary Precedents of the House of Representatives*, Government Printing Office, Washington, 1899. A supplement of three volumes was edited by Clarence Cannon and published in 1935.

² One of these receives a salary of \$7,500 per year, while the assistant is down on the pay roll for \$5,500 per year.

³ See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 1.

⁴ *Ibid.*, pp. 19-20.

not for the elaborate rules now governing. They admit that other legislative bodies get along on a distinctly less involved set of rules, but they maintain that these chambers are basically different from the American House of Representatives. **Why the Rules Are Not Modified** In most national legislatures which have substantial responsibilities¹ a definite system of leadership is provided to guide the work. Under our plan there is little or no provision for legislative leadership: the President is set off on his own pedestal; the cabinet advises the executive but has little to do with the legislative branch. In other words, it is asserted that the presidential type of government which we have adopted makes no formal provision for the leadership which is an essential feature of cabinet government. Yet we have a large lower chamber of 435 members which we saddle with a great deal of responsibility. The elaborate rules now effective tend to centralize control in the hands of a small group of nestors who have been so long in the House of Representatives that they know the ropes and can surmount even the rule-created barriers. Thus, lacking a formal leadership, we achieve under the rules an informal leadership which, while by no means perfect, does make it possible to turn out work. Any attempt on the part of ordinary members to amend the rules in any particular is usually regarded with suspicion—practically all changes are recommended by the Committee on Rules which is carefully guarded by the handful of old-timers belonging to the majority party who are endowed with leadership. Hence, despite the dissatisfaction which is openly expressed by many members of the House, the old rules continue in force.

The American office of Speaker has its roots in the office carrying the same title in the English House of Commons. Nevertheless, there has been so much development since the transplantation **Office of Speaker** that the two positions are now basically different. The English Speaker is in no sense of the word a "partisan," although he has ordinarily been active in politics prior to his elevation to that office. As Speaker he must deal impartially with the members of all political parties, recognizing those who want the floor, applying the rules, and guiding business without favor. Even when one party goes out of control and another comes in, the Speaker usually remains in office in England. In contrast, the Speaker of the House of Represent-

¹ Of course, in the Third Reich and countries which have modeled their governments thereon the legislature is a mere sham.

atives is not only an active partisan, but he is the leader of the majority party. He uses his official position to advance the interests of his own party, although he may not be as open or as ruthless in his methods as was the case during the decades around the turn of the century when "Czar" Reed and "Uncle Joe" Cannon held the position. It would be unthinkable for an American Speaker to continue in office after his political party loses control of the House.¹

Prior to the "revolution" of 1910-1911 which was directed at the Speaker of the House, the holder of that office could almost claim to be monarch of all he surveyed. Indeed his authority was so extensive that one well-known speaker was dubbed "czar."² The autocratic regime which he guided was naturally resented not only by members of the minority party, who found themselves almost helpless, but even by the more independent and liberal members of the majority party. The Speaker would recognize only those members who conferred with him beforehand and convinced him that their views were sound. Committee appointments which he dispensed went to those who could be depended upon to follow his wishes. The Rules Committee of which he was chairman would give a place on the order of business only to those measures which the Speaker desired enacted and would bring in amendments to the rules only in so far as they were approved by that worthy. In 1910 insurgent Republicans joined forces with a powerful Democratic minority to take away the position of the Speaker on the Committee of Rules. Speaker Cannon resorted to every tactic he knew to stave off the storm, but his opponents refused to be beaten down and they finally triumphed. The following year, having tasted blood, the "revolutionists" proceeded to take away the power of the Speaker to name members of standing committees.³

**The
"Revolution" of
1910-1911**

**Present
Functions
of the
Speaker**

At present the Speaker exercises two principal formal functions: (1) the power to recognize, and (2) the power to apply the rules. In addition, he is also the leader of the majority party and as such occupies a very prominent place in the councils of that party as they relate to the conduct of the

¹ On the office of Speaker, see M. P. Follett, *The Speaker of the House of Representatives*, Longmans, Green and Company, New York, 1904; and C. W. Chiu, *The Speakers of the House of Representatives Since 1896*, Columbia University Press, New York, 1928.

² Thomas B. Reed was frequently referred to as "Czar" Reed.

³ A detailed account of the "revolution" may be found in C. R. Atkinson, *The Committee on Rules and the Overthrow of Speaker Cannon*, author, New York, 1911.

House of Representatives. In order to speak, make motions, or offer amendments, Representatives must secure the floor and that requires their recognition by the Speaker. Although the rules of the House make some stipulations as to who shall be given the floor, even so a considerable amount of leeway remains to the Speaker. If he is favorably disposed toward a Representative, it is probable that more than an ordinary amount of recognition will be accorded, while if he is hostile the member may find it difficult to obtain the floor at all. In extending recognition the Speaker, of course, favors his own party.¹ Although no longer chairman or even a member of the Committee on Rules, the Speaker applies the great accumulation of rules already established. If there is any doubt as to what a rule requires, the Speaker has the authority to interpret. Thus, Speaker Reed ruled that in determining whether or not a quorum was present not only those who answered the roll call but those physically present in the chamber might be counted. There was violent objection at the time by minority members who sought to keep the House from transacting business by preventing a quorum, but it has for long years been regarded as a sensible interpretation with a beneficial effect. A majority of the House of Representatives may overrule the interpretation placed on a rule by the Speaker, but it rarely exercises that prerogative. As leader of the dominant party the Speaker confers at frequent intervals with the little group which has so much to say about what shall be done in the House. He is, of course, active in the party caucus. Not infrequently he is called to the White House to go over legislative matters with the President. Finally, the Speaker has the right to refer bills to committees—a power which in the past has sometimes been distinctly important, but at present the great majority of bills are more or less automatically sent to committees by the clerk on the basis of their subject matter. Occasionally when there is a question as to what committee shall receive a certain bill, the Speaker still decides.

The Speaker is the only official of the House of Representatives who is a member of that body, but there is quite a retinue of salaried persons. The two parliamentarians have already been mentioned. The principal clerk of the House is assisted by a battery of reading, copying, journal, file, and en-
grossing clerks, who perform the functions which their titles suggest.

Other
House
Officers

¹ However, Speakers may also try to be fair to the minority-party claims. Nicholas Longworth was praised by the Democratic opposition for his fairness.

Inasmuch as the House opens its sessions with prayers, it is necessary to employ a chaplain or chaplains who have the ability to deliver prayers that are neither too long nor too pointed, but withal sonorous and full of dignity. Sergeants-at-arms and door-keepers see that the doors leading into the House chamber are guarded, maintain order on the floor when members forget their legislative dignity and seem to be headed toward fistic encounters, disburse the stationery and incidental money, and attend to the general comfort and convenience of the members. The former are charged with the task of serving subpoenas on witnesses for committees, and even on occasion they may be ordered by the Speaker to round up enough absent members to secure a quorum for business. Pages in knee breeches are employed to carry messages, take amendments to the clerk's desk, and run errands within the immediate confines of the Capitol. Cooks, barbers, waitresses, cashiers, manicurists, mineral-water dispensers, stenographers, shorthand experts, librarians, bill drafters, elevator operators, janitors, and watchmen are included in the list of those directly or indirectly employed by the House of Representatives.

THE COMMITTEE SYSTEM

The House of Representatives has long been so unwieldy in size and organization that much of its work is performed by committees rather than on the floor. Visitors to Washington frequently are greatly disappointed at what they see in a formal session. To begin with, the attendance may be small; the debate is often dreary and uninspired; the matter under consideration may seem trivial. On this basis they conclude that the House of Representatives is a very unimpressive body, especially for a country as varied in character as the United States. At times the House conveys a very different impression, for there will be an excellent attendance, vigorous debate, and consideration of important problems, but such occasions are probably the exception rather than the rule. There are several reasons for the routine character of numerous sessions—one of the most important is the fact that preliminary work is done by a committee before the bill ever reaches the floor of the House. The gigantic tax bill of 1941 may be taken as a case at point. No one could very well rate it as unimportant, but the deliberations on the floor were necessarily somewhat general because of the exigencies of the times and the effect of any considerable modification. Yet anyone

**Importance
of Com-
mittees**

who assumes that the bill more or less took form out of the air and was passed only after cursory consideration makes a grave error. The Committee on Ways and Means spent many weeks drafting the bill. During that time it sought expert advice from several sources—the President and the Secretary of the Treasury among others gave their opinions—and it devoted protracted discussions to the policies involved. Most of the important bills go through much the same process before they come onto the floor and hence it is not expected that the final step will be more than a routine approval of what has gone before.

The House maintains several types of committees: the committee of the whole, standing committees, conference committees, special committees, and joint committees. All of these have **Types of Committees** their uses and may be of considerable importance, but the one which overshadows all the others is the standing committee. Indeed when the term “committee” is used, most people will probably more or less automatically think of a standing committee.

A great deal of the business of the House is transacted by the committee of the whole.¹ This committee includes in its membership all Representatives and is to be distinguished from the House **Committee of the Whole** itself only with some difficulty. It meets in the same chamber, has the same members, and goes through some of the same motions, but it is presided over by a chairman other than the Speaker, uses much less burdensome rules than the House, and is particularly advantageous because it expedites matters. The quorum of the committee of the whole is 100 instead of 218. Debate is limited to five or ten minutes in the case of a single person on one bill, whereas in the formal sessions of the House an hour is permitted. So the House meets as a committee of the whole to carry on most of its debates and to consider amendments to pending bills; then it adjourns to meet in five or ten minutes as a House to pass the bill. One of the greatest advantages of the committee of the whole is that the time-consuming roll-call vote is not used.

When the two houses of Congress are unable to agree on the details of a bill, although they favor its general character, it is the **Other Committees** practice to set up special conference committees to iron out the differences. The composition and work of these com-

¹ There are really two committees of the whole: the Committee of the Whole House and the Committee of the Whole House on the State of the Union. The former considers private bills and the latter public bills. For all practical purposes these committees are the same, made up as they are of all members of the House.

mittees will be considered in greater detail at a later point,¹ so that it is sufficient to mention them here. Special committees are appointed to handle matters which are not recurring in nature and are discharged when they complete their assignment.² Special committees may be appointed to attend the funeral of a colleague or to investigate subversive activities by radicals. The Committee on Enrolled Bills is an example of a joint committee which is of permanent character.

For some years prior to 1927 the House maintained sixty-one standing committees on various types of business that supposedly **Standing Committees** had to be handled more or less regularly. Many of these actually had little or nothing to do and hence it was decided in 1927 to reduce the number to the forty-seven which are currently in existence. There is a striking divergence among these committees as to amount of work, size, and general importance. Twelve are of outstanding significance and handle the bulk of the bills—members of these committees are not permitted to serve on another standing committee. Membership on the committees on Ways and Means and Appropriations is particularly prized, for these bodies have prestige, carry on a tradition of able chairmen, and receive bills concerning taxes and expenditures. The other ten of these ranking committees are as follows: Judiciary, Interstate and Foreign Commerce, Banking and Currency, Rivers and Harbors; Agriculture, Labor, Military Affairs, Naval Affairs, Public Lands, and Rules. A number of other committees, such as Foreign Affairs, Education, and Affairs of the District of Columbia, may be quite important at times, but they are not regularly placed on the same plane as the first dozen.

Then there are committees of which few people have ever heard and which nobody but their members and employees would ever miss if they suddenly disappeared. Almost no work is sent to them and what is submitted might well be handled by clerks. The Committee on the Disposal of Executive Papers, as its name suggests, is more or less the wastepaper man of the House. In reality it has even less to do than the old paper and rags man, for the executive and administrative departments do the work of sorting out the valuable papers that need to be preserved, while the manual work of disposing of the useless papers is, of course, entrusted to janitors. Likewise the Committee on Mileage is another example of a far from overworked group. One

¹ See Chap. 20.

² The House of Representatives had five of these special committees in 1941.

may ask why these committees are permitted to exist when they have so little significance. The answer is that they provide additional chairmanships and posts for political followers, which are warmly welcomed by those who must be satisfied with the crumbs from the table. If one cannot rate a major committee, it may be solacing to be able to print on a letterhead "Chairman of the Committee on Disposal of Executive Papers." Discriminating recipients of letters will not be overly impressed by such a shabby post, but the rank and file of people scarcely distinguish one committee from another.¹

There is no uniform size of standing committees, although a number of them have twenty-one or twenty-five members. The largest committee is that on Appropriations which currently has forty members and is so elaborately organized internally that it is almost a system of committees in itself. The smallest committee has only two members.² There is some relationship between size and importance, but the correlation is not entirely dependable. The Ways and Means Committee is usually considered to have a slight edge over any other committee, although it has fourteen less members than the Committee on Appropriations. The highly important Rules Committee has only fourteen members in contrast to the twenty-one or more of some of the second-rate ones. Membership is divided between the majority and minority parties on the basis of a gentlemen's agreement arrived at by the leaders of the two parties, depending in general upon the respective strengths of the parties in the House of Representatives. It may be added that the majority party is careful to preserve a definite margin of safety, even when the minority party is almost as numerous.³ A committee of twenty-five might be apportioned fourteen majority members and eleven minority members, but it is more likely that there will be a division of fifteen and ten or even sixteen and nine.

Since the Speaker was dispossessed of his power to name committee members, the House has formally elected these members, but the actual selection is made by the party organizations in the House. Democratic assignments are made by the Democratic members of the Ways and Means Committee upon

Size of
Standing
Committees

Committee
Appoint-
ments

¹ A complete list of the House committees may be conveniently found in the *Congressional Directory*, which also lists members of each committee.

² The Committee on Disposal of Executive Papers.

³ In 1941 the Democrats had twenty-five members of the Appropriations Committee and the Republicans fifteen.

consultation with various leaders, after the Democratic caucus has named its representatives on the Ways and Means Committee. The Republican caucus has a Committee of Selection which undertakes the rather trying task of distributing the seats allotted to the Republicans. Selecting committee members may carry with it some prestige, but it is a thankless job, for everyone wants to be on the most important committees and few are keen about the minor ones. The job would be harder than it actually is were all committee assignments to be shuffled every two years. As it is, Representatives may remain on the same committee year after year, until perhaps eventually they become either the chairman or the ranking minority member. This means that unless there has been a shift in party control the work of the committees on Committees is mainly that of filling vacancies.¹

During the days when the House was less democratic than at present, committee chairmen sometimes took upon themselves the responsibility **Committee Chairmen** of the entire committee. They decided what they wanted to do about a certain bill and then, just before a report had to be made to the House, they notified the members of the committee what was expected. Minority Representatives might not even be accorded this courtesy. At present it would require a very bold chairman to attempt such a course. Chairmanships are still highly prized and eagerly sought, but the members, particularly the majority members, also expect to be consulted. It must be obvious to everyone that chairmen are always members of the majority party; more than that, they are members of that party who are in good standing and who have served long in the House. It might be supposed that the most informed and competent Representatives among experienced members would be made chairmen, particularly of the most important committees, but this is not the case. There is but one rule which in the last analysis controls the selection among the old-timers of the party in power and that is "seniority." There may be in the House a member who belongs to the majority party, has served that party loyally in the House for many years, and who has excellent knowledge in a field related to that of a committee. Yet unless this man outranks everyone else who might want its vacant chairmanship, there is very little prospect of his getting the office. This means that comparatively stupid Representatives sometimes find themselves shot by their seniority into the most

¹ This does not mean that members who have served a term or so may not be promoted by being shifted from a less important to a more important committee.

influential posts, while more competent and equally experienced ones who have had shorter terms have to take the minor leavings. It is true that most chairmen are taken from the ranks of the committee itself and that this serves at least to give an apprenticeship to mediocrity. More than that, it is argued in its favor that seniority prevents intrigue and manipulation. Finally, it must be admitted that even under seniority a good many chairmen have been distinctly able men.¹

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¹ For a persuasive defense of the seniority system, see James K. Pollock, "The Seniority Rule in Congress," *North American Review*, Vol. CCXXII, pp. 235-245, December, 1925-February, 1926.

CHAPTER XVIII

THE SENATE

THE upper chambers of national legislative bodies are frequently identified more with honor than with authority. The House of Lords in England, for example, is made up of nobles both temporal and spiritual, many of whom represent the most aristocratic ancestral lines; but, although its prestige is enormous in certain circles, it long ago yielded final power in controversial matters to the House of Commons. The Senate of the United States started out under rather auspicious circumstances—at a time when state pride was a particularly powerful force a chamber composed of two ambassadorial Senators from each state was naturally in the public eye. During the intervening century and a half it has managed very successfully to hold its place of influence in spite of a world-wide deterioration of second houses in general. The Senate and House of Representatives are sufficiently different at present to make it somewhat difficult to compare their authority, but few would dispute the very great influence of the Senate in national affairs. As we noted in the preceding chapter, few among those who advocate reforms in the governmental structure propose to abolish the Senate altogether, although a good many might modify some of its practices.¹ All in all, it may be said that the American Senate is today the most powerful upper legislative body in the world.²

MEMBERSHIP IN THE SENATE

In comparison with the House of Representatives the Senate is a reasonably small body of ninety-six members. It started out with
Size scarcely more than one-fourth that number and as new states have been created has added to its membership, until for approximately three decades now it has remained at its present size. Whether the future will see an enlargement depends entirely upon the admission of new states to the union. If Hawaii,

¹ For example, its rules have been severely criticized.

² The Japanese House of Peers has been influential; among the small countries Switzerland stands out because of its powerful upper house.

Alaska, and Puerto Rico, to say nothing of New York City and Chicago, were granted statehood we might find ourselves with a Senate exceeding one hundred in size. However, any considerable enlargement is highly improbable. A body of almost one hundred is perhaps too large for deliberative purposes unless definite leadership is provided, especially when some of that number are invariably temperamental enough in character to delight in exhibitionism. Nevertheless, in comparison with the House of Representatives and indeed most other national second chambers, the Senate is distinctly limited in membership.¹

It is not possible to overemphasize the importance of the equal state representation in the Senate. Not only is the size determined on the basis of states rather than population, but the very psychology manifested by the Senators is accounted for to a large extent by this equality of representation. The principle of federalism may be dead or dying in the allocation of power between the state and national governments (as some observers have maintained at length), but the provision for equal representation which was deduced from it is still a very real and living force in determining the attitude and conduct of the United States Senate. Senators carry themselves with a demeanor which some observers have likened to that of royalty. Perhaps it is somewhat of an exaggeration to speak of the assembled Senators as an aggregation of kings, but it is not stretching the truth too much to suggest that they are at least a group of ambassadors.² The very manner of address suggests the diplomatic corps; they are not referred to as Senator Brown and Senator Black, but as "the Senator from Texas" or "the Senator from Massachusetts," much as diplomatic representatives are announced as "the Ambassador of the United States" or "the Minister of Sweden." Moreover, they think of themselves as spokesmen for sovereign states rather than as representatives of relatively temporary districts or as lawmakers of the United States. Senators are very loathe to restrict even those of their number who prove public nuisances, consumers of vast amounts of time, or positive thorns in the flesh, largely perhaps because of this ambassadorial picture they hold of themselves. Even

¹ The English House of Lords has more than seven hundred members; the Senate of the Third Republic in France had more than three hundred members.

² On this point, see the illuminating little book written by former Senator George Wharton Pepper, entitled *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930.

the strutting about, so dear to some of the Senators, may be traced back to this source. The Constitution itself recognizes the sacredness of the dogma of equal representation by qualifying the article dealing with amendments¹ thus: "No state, without its consent, shall be deprived of its equal suffrage in the Senate."

Despite the fact that equal representation is so basic a factor in the composition and behavior of the Senate, there has been a certain amount of criticism directed at it. Nevada has a population which only slightly exceeds one hundred thousand; New York is more than one hundred times as populous. Yet both states have two Senators. If there was only the glaring inequality noted in the case of Nevada and New York and if the remaining forty-six states were substantially equal in population, the situation would provoke little comment. But there are the Delawares and the Rhode Islands of small area and unimpressive population totals and the more extensive Wyomings, Arizonas, and Idahos with their sparse inhabitants to be set against the Pennsylvanias, the Illincis, the Ohios, the Texases, and the Californias. States with only one-fifth of the population are accorded more than one-half of the Senators—and that in a government which prides itself on democratic equality in its foundations. Certainly if the states with few people "ganged up" against the thickly settled ones, there might be intolerable conflict and selfishness. Fortunately that happens so rarely that it scarcely constitutes any problem at all. Nevertheless, there is some substance to the complaint of New Yorkers that they contribute perhaps one-third of federal taxes and yet have only two votes out of ninety-six in the Senate in determining what those taxes shall be and how the money raised shall be spent.²

It has been suggested that every state might continue to be given two seats in the Senate, but that the states with the great populations might be awarded a sort of bonus in the form of an additional seat for, say, every million people. As long as the present Constitution remains in force, no modification of this kind could possibly be effected because of the clause, referred to above, which declares that no state can, without its consent, be denied equal representation in the Senate. It might be possible to persuade some of the

**Criticisms
of Equal
Represent-
ation**

**The Bonus
Proposal**

¹ Art. V.

² Of course in the House of Representatives New York has members in proportion to its population and can exert considerable influence on tax measures.

states to surrender their equal voice, but no sane person would for a moment imagine that every state would agree to this.¹

Even if it were feasible to abandon the present system of equality there is considerable doubt in the minds of many informed persons as to whether or not it would be desirable. There would necessarily be a substantial increase in size which would in itself present drawbacks. Moreover, *Arguments in Favor of Status Quo* since the House of Representatives can reflect the point of view of the most thickly inhabited and populous states, why need the Senate be constructed on the same basis? Woodrow Wilson concluded that the Senate derives its chief significance from the "fact that it does not represent population, but regions of the country."²

In keeping with their fondness for indirect rather than direct popular election, the men of 1787 ordained that Senators should be elected by the respective state legislatures. It was felt that the members of a legislature would be more capable than the people to pick the strongest available persons. Moreover, ambassadors are never elective officials—they represent a government in another capital and are appointed by the heads of the government for that purpose. For more than a century this method of selection was employed with varying results. Pennsylvania saw fit to keep one after another of its political bosses in Washington,³ while other state legislatures found it difficult to agree on any candidate and sometimes were deadlocked for weeks and even months at a time. On the other hand, certain states sent exceedingly able "ambassadors" to the Senate. One need mention only the names of Webster, Clay, Calhoun, and the elder LaFollette as examples of scintillating choices made under the original system.⁴ Particularly in those states where puppet Senators were designated by political bosses or big business, a great deal of dissatisfaction arose. State legislatures which ignored their local functions to scrap interminably over the senatorial choice also came in for castigation.

During the closing years of the nineteenth century public opinion became sufficiently aroused to cause the House of Representatives to

¹ Some states on general principles seldom approve of anything. Where their own interests were involved, there would be even less likelihood of approval.

² See his *Constitutional Government in the United States*, Columbia University Press, New York, 1908, p. 114.

³ The Camerons, Quay, and Penrose held senatorial seats for something like half a century.

⁴ The more recent of these was also popularly elected.

pass several resolutions proposing an amendment substituting direct popular election for the older legislative method, but the Senate refused to concur. Not deterred, the states began to establish senatorial primaries which permitted the voters to designate their favorites and required state legislatures to ratify these popular choices.¹ By 1912 some twenty-nine states had joined the parade and managed to circumvent the formal machinery specified in the Constitution. In that year the Senate reluctantly admitted defeat in its efforts to stave off change and in 1913 the Seventeenth Amendment had received sufficient support to cause its promulgation.

At present Senators are elected in every state by direct popular vote, although the nomination procedure is still lacking in uniformity.

Criticism of Legislative Selection When it votes on general state officers, the electorate also expresses its sentiments in regard to a Senator—that is, if one of the seats of the state has been vacated or if a term has expired. Nominations are now ordinarily handled through direct primaries; but some of the states prefer the convention plan for this office, even though they may use direct primaries for other positions. Those who are permitted to vote for members of the “most numerous branch of the state legislature” must be given a voice in choosing Senators under the terms of the Seventeenth Amendment. Special elections are provided for filling unexpected vacancies caused by death or other circumstances, but legislatures may authorize the state governor to fill such vacancies by appointment—even to ensconcing themselves in the position.²

Present Method of Electing Senators Whether the new plan of electing Senators is more or less satisfactory than the former one, it is difficult to say. Pennsylvania continued Boss Penrose in the Senate after the Seventeenth Amendment became effective and tried to place Boss Vare there, although he was finally denied a seat. Nor is there any

Evaluation of Popular Election ¹ Oregon and Nebraska specifically required a pledge from state legislators that they would elect the candidate favored by the popular vote. In 1908 in Oregon there occurred the remarkable circumstance of a Republican legislature electing a Democratic Senator.

² The majority of states empower their governors to fill vacancies by appointment, particularly if a general election is not far off. The governors of Kentucky and Texas have recently arranged to have themselves transferred to the Senate, surrendering, of course, their gubernatorial positions. The former had himself appointed, while the latter accomplished the same end by a special election. Even more recently the governor of South Carolina moved to the Senate to take the seat vacated by Supreme Court Justice Byrnes.

conclusive indication that the puppets of bosses and corporations have been shut out by the direct-election method. Former Senator James E. Watson misses the great names that were associated with the Senate during the earlier era,¹ but distance may have for him thrown a rosy haze about the past. The names of Glass, Norris, and Wagner do not strike one less forcefully than the names of the Senators who held office in the pre-Seventeenth Amendment era or even the pre-senatorial primary period. On the other hand, the Senate has not quickened its pace perceptibly with the new and supposedly more popular blood. There are still a few very weak Senators besides many of mediocre ability, but then that has always been the case.

The Constitution stipulates that Senators shall be thirty years of age and nine years a citizen of the United States. And, of course, they must be inhabitants of the state which they represent. **Qualifications** Holders of a civil office under the United States must surrender these positions if they wish to qualify as Senators. The qualifications probably strike the reader as very simple—as indeed they are. But it must not be supposed that custom has not added others which are distinctly more arduous. The average age of the Senators does not often drop much under fifty-five and may sometimes almost reach sixty. This means, of course, even allowing for long records of service, that Senators are not young when they begin their terms. For every Clay, LaFollette, the younger Lodge, and Holt ² there are dozens of men who are past fifty or even sixty when they enter the Senate.

With few exceptions Senators are native-born citizens of the United States and have been associated with the states which elect them either all of their lives or at least the greater part of their mature years. The rule is that Senators must have served their political parties long and actively before being favored with support. Service in the lower house of Congress, in a state legislature, or in a state executive office is frequently in the background of senatorial candidates and probably is helpful if not absolutely necessary for election in most states. A reasonable financial backing, either provided by a personal fortune or well-to-do friends, is likewise essential in most cases, for primary and election costs are likely to be high, even if a candidate is well

¹ See his *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

² These men were in their early thirties when elected. Henry Clay took the oath of office before he was thirty, while Rush Holt of West Virginia had to wait a few months until his thirtieth birthday permitted him to take a seat.

known and enjoys party backing.¹ Judging from the predominance of lawyers in the Senate, legal training is often regarded as a desirable, although scarcely an absolute qualification.²

The Constitution confers on the Senate the power to judge the qualifications of its members,³ but the Senate chooses to exercise that authority, at least in more than a nominal fashion, only on rare occasions. If one could imagine a notorious criminal winning election, it might well be that the Senate would be sufficiently shocked to refuse a seat. However, Huey Long was allowed to occupy a seat, despite all of the charges of corruption and perversion of democratic institutions that were hurled at him. In the 1920's great notoriety attended the attempts of Boss W. S. Vare of Pennsylvania and public-utility favorite Frank L. Smith⁴ of Illinois to gain admission. Both had spent money lavishly during their campaigns and in both cases there was widespread criticism of the sources of substantial portions of those funds. Finally, in December, 1927, the Senate refused seats to both claimants. In general, however, it is the policy to concede to a state the right to send whom it pleases to the Senate.⁵ This has resulted in some strange choices, but it is perhaps a sound rule. In extreme cases the Senate must take cognizance of an abuse of this freedom—on occasion it may seem that the Senate has been far too long-suffering—but it could scarcely examine in detail the strength and weakness of each candidate without laying itself open to serious criticism.

Senators are the envy of most elective public officers because they need face the voters only every six years. Representatives must fight for their offices three times to the Senators' one, while even the President has to go through the rigors of a campaign every four years. The length of term contributes to an independence

¹ The maximum allowed for the final election is \$25,000, but this does not include primary expenses or personal expenses. Expenditures exceeding \$100,000 have not been uncommon.

² It is only fair to point out that many of the lawyers are not active in practice and indeed would be at a loss in handling a case.

³ Art. I, sec. 5.

⁴ For a very good study of this case, see C. H. Wooddy, *The Case of Frank L. Smith; A Study in Representative Government*, University of Chicago Press, Chicago, 1931.

⁵ However, early in 1942 the Senate Committee on Privileges and Elections recommended that Senator Langer of North Dakota be unseated on the ground of his past record. Mr. Langer had been permitted to take a seat in the Senate in 1941 "without prejudice" to a later move to unseat him; consequently only a majority rather than a two-thirds vote was required for expulsion. The Senate scheduled a vote on the matter for March, 1942. See the *New York Times*, March 3, 1942.

on the part of Senators which is not evident in the case of any other legislators in the United States. It also stimulates a contempt for detail which most elective officers cannot afford. During a period when public economy is being urged from every side and when the House of Representatives has made cuts in appropriations, it is the Senate which will restore the original figures on the ground that a few million dollars more or less do not make a great deal of difference.

Not only do Senators have long terms, but they are not all elected at the same time, for an overlapping plan was worked out in the Constitution which provided that only one-third of their number should come up for election every two years. ^{Continuity in Membership} This, of course, makes for a continuity which is lacking in the House of Representatives, or indeed in most legislative bodies. As a matter of fact, less than one-third of the members are ever new because reelections are commonplace. Senators who have served two decades are not curiosities, while some nestors can point to more than thirty years spent in that body. Over the long period extending from 1790 to 1924 an average of 27.2 per cent of the Senators were new every two years, although at times the ratio fell as low as 10 per cent. In comparison the rate of turnover in the House of Representatives during the same period ran to 44 per cent.¹ Considering the long initial term and frequent reelections, it is not surprising that the Senate is more experienced than its sister body or that individual Senators in general have more influence than their colleagues in the House.

Although they spend more to get elected and although they occupy a higher social position in Washington, Senators receive exactly the same salary which is paid Representatives—\$10,000 per year.² Their perquisites, however, are somewhat more liberal, for they are allowed \$10,320 per year³ for secretarial and clerical hire in contrast to the \$6,500 for Representatives. They have the same mileage allowance going to and from Washington; enjoy the same franking privilege;⁴ and may make use of the telephone and telegraph

¹ See R. E. McClendon, "Re-election of Senators," *American Political Science Review*, Vol. XXVIII, pp. 636-642, August, 1934.

² Early in 1942 Congress decided to place its members under federal pensions. Thus a Senator who paid in a few hundred dollars might receive a generous pension the rest of his life after leaving the Senate. An outraged public quickly forced the repeal of this action.

³ The Senate sought to increase this amount after the declaration of war in December, 1941, but the House refused to concur. An increase of approximately fifty per cent was proposed.

⁴ And this is subject to the same abuses. Senator Burton Wheeler gave the America

lines at the expense of the Treasury. Their opportunities for junketing, however, are somewhat more frequent because of their smaller number. Moreover, their trips often permit a style far above that of their brethren of the lower house. Representatives do indeed travel at public expense when they serve on investigating commissions, but they usually take ordinary transportation facilities. On the other hand, Senator Arthur Robinson of Indiana and a little group of fellow Senators decided that it would be pleasant to see the Far East at the expense of the government during the 1930's. On the plea of visiting the Philippines they succeeded in having a cruiser of the United States Navy placed at their disposal and together with their wives and children¹ set out to visit Japan, China, and incidentally the Philippines. Daughters found the attentions of the naval officers delightful;² everyone had a very pleasant journey unmarred by the crowds of an ordinary vessel; but the exact benefit to the government was somewhat difficult to perceive.

The privileges and immunities of Senators are the same as those accorded Representatives, but it is probable that Senators make more use of them. The fact that for all practical purposes debate is unlimited in the Senate means that Senators are given to making statements which relate to almost every conceivable subject, irrespective of what bearing their words may have on the work of Congress. Moreover, the independence of the Senators encourages an irresponsibility which sometimes attains notorious proportions. The late Senator Long of Louisiana made the floor of the Senate his sounding board for the most outrageous and unfounded vilification of any person or any group he chanced not to like at the moment. Fellow Senators attempted to remonstrate when he made these demagogic attacks on his senatorial colleagues and the presiding officer went so far as to censure him for his irresponsible vituperation. However, beyond that mild action no official steps were taken to curb the "Kingfish," although those whom he attacked had no recourse. Finally, the Senator from Louisiana went so far as to send broadcast through the mails printed copies of some of his violent Senate speeches. First Committee one million franked postcards to be used in carrying on their campaign against American participation in the European situation. It was alleged but not proved that ordinary correspondence of that committee was carried without postage during 1940-1941 because congressmen had furnished quantities of franked unaddressed envelopes. See the *New York Times* for July, 1941.

¹ A nominal charge of \$1.00 per day was paid for the board of family members.

² The daughter of Senator Robinson later married one of the officers.

**Privileges
and Im-
munities of
Members**

and one of his victims brought a suit on the grounds of slander and libel. The federal courts were reluctant to entertain a case involving the touchy pride of the Senate, but the situation presented such abuses that they finally consented. After due consideration they ruled in effect that Senators could not use their immunity to spread unfounded charges of vile character by means of the mails, even though the charges themselves were uttered on the floor of the Senate.¹

ORGANIZATION OF THE SENATE

In its broad outlines the organization of the Senate resembles that of the House of Representatives, but it is clearly divergent in a number of particulars. Considering the smaller size of the Senate, the longer terms of its members, and the prevailing psychology, it is not strange that there should be important differences. Inasmuch as the Senate is compelled only to pause to take in a few new members every two years, there is no formal process of organizing at regular intervals. When one political party surrenders control to its rival, there will be a thorough house-cleaning of staff members and a reshuffling of committees; but in the absence of a political earthquake the Senate goes along year after year without attempting considerable changes at any one time. If a president pro tempore dies in the middle of a session, a successor is picked by the majority party to hold that position until the party loses control or until the Senator dies or goes out of office.²

The Senate ordinarily meets at the same time as the House of Representatives. Both formerly convened in December but now gather to begin a new session on the third of January. At times the Senate may need to meet more frequently than Sessions the House because it has presidential appointments to confirm and treaties to ratify, but the Constitution prescribes that "neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days."³ Representatives of both houses confer on adjournments at holiday time and at the end of the session

¹ The suit was brought by S. T. Ansell in the Supreme Court of the District of Columbia. Senator Long pleaded his immunity from civil arrest during the time the Senate was in session, but the court held that he must stand trial. This ruling was upheld by the appellate court of the District and by the Supreme Court of the United States in *Long v. Ansell*, 293 U.S. 76 (1934). Justice Brandeis, speaking for an unanimous court, declared that "Senators of the United States while in the District of Columbia in attendance at sessions of the Senate are immune from arrest in a civil case but not from the service of a summons."

² Senator Harrison died in the middle of the 1941 session, whereupon the Senate elected Carter Glass of Virginia as president pro tempore.

³ Art. I, sec. 5.

in the summer or fall. Day-to-day adjournments are, however, decided independently, with the result that on any particular day when Congress is in session, one house may be meeting and the other not. While the public is ordinarily admitted, the Senate occasionally sits in executive session to consider treaties, appointments, and related matters.

The late President Coolidge is reported to have declared that the rules of the Senate could be adequately summarized in the following words: "The Senate does what it wants to when it wants to."

Rules

As Vice-President, Thomas Jefferson prepared for the use of the Senate the *Manual*, which we have already referred to in connection with the rules of the House of Representatives.¹ While not all of the present rules by any means are to be found in this *Manual*, nevertheless, it continues as the general basis for senatorial rules. Other formal rules have been adopted from time to time, although there is not the regular biennial acceptance of the rules of the previous Congress as in the case of the House. The rulings of the presiding officers have also been collected and serve a useful purpose in guiding the Senate today, but they are less bulky than those of the House.² In general, the Senate rules are distinctly less complicated than might be expected. The smaller size of the Senate permits an informality which could not well be associated with the larger House of Representatives. More than that, the senatorial psychology, to which we have several times referred, stresses the role of the individual to a far greater extent than does that of the House. The Senate may groan under the never-ending speeches of some verbose colleague and it may chafe under the dilatory tactics of an obstructionist who sees in himself a modern Messiah chosen to save the country from itself, but it never comes to the point, long ago reached by the House of Representatives, at which it feels compelled to adopt rules restrictive enough to render those practices impossible.³

Many informed persons are of the opinion that the rules of the Senate are not suited to this modern day when there is much business to be transacted and the time element may be of first-rate importance. Vice-President Dawes arrived at this conclusion when he presided over the Senate some twenty years

Proposals to Revise the Rules

¹ See Chap. 17.

² The rules of the Senate are conveniently gathered together in *Senate Manual Containing Standing Rules and Orders of the Senate*, Senate Document 258, Seventy-fourth Congress, second session, Government Printing Office, Washington, 1936.

³ For the Senate cloture rule of 1917, see Chap. 20.

ago and decided that he would bend every effort toward revising them in keeping with modern requirements. Few public men have equaled Charles G. Dawes in ingenuity, vigor, and compulsion, but even Dawes could not move the Senate. The more he cajoled, argued, and appealed to public opinion the more obstinate the Senators became. In the end Mr. Dawes emerged battered and bruised from the fray and the Senate went tranquilly on its way with the same old rules. Individual Senators will admit that the behavior of the more extreme of their colleagues leaves much to be desired and that the rules play into the hands of the Huey Longs. However, they insist that a large measure of freedom is essential to a body which desires to remain as independent as does the Senate. The price that would be required to ban filibustering and other obnoxious practices would, they maintain, be much too high. Whatever one may conclude as to the merits of the controversy and as to the seriousness of a situation which permits a few stubborn Senators to hold up action on immensely important matters, it must be agreed that the American Senate is a far cry from the pathetic legislative bodies of the totalitarian states.

The Vice-President of the United States is assigned the task of presiding over the sessions of the Senate. Some Vice-Presidents have displayed considerable interest in this duty and have given **Presiding Officers** it the best of their talents, with the result that they have at times exercised far-reaching influence on the general business of the Senate.¹ Others have regarded the duties of a presiding officer as beneath their dignity or at least as outside their main circle of interests. It is rare for a Vice-President to ignore his senatorial assignment entirely, but he may be halfhearted in interest and frequently absent from his post. The truth is that not everyone is fitted to act as presiding officer of a body such as the Senate. An impatient-executive type of man would be driven to distraction by the endless talk on issues that are often beside the point. A good presiding officer for Senate purposes needs to be composed himself, wedded to dignity, tolerant of wordiness and obstinacy, and indeed an excellent judge of human nature.

Inasmuch as the Vice-President is not always present at meetings, the Senate chooses a president *pro tempore* to act as a substitute.² This person, nominally elected by the Senate itself but actually the

¹ Vice-President J. N. Garner supposedly exercised very great influence on Senate deliberations.

² He presides permanently if the Vice-President becomes President. In that case the president *pro tempore* receives a salary of \$15,000 per year.

choice of the majority caucus, is, like the Speaker of the House, the ranking member of the dominant party. The extent to which he presides is, of course, determined by the conscientiousness with which the Vice-President assumes this function. But even if he does not preside over the Senate a great deal of the time, the president pro tempore is likely to have a large measure of influence.

In addition to its presiding officers, the Senate has a full complement of other staff members, which in general correspond to those of the **Other Officers** House of Representatives. However, the Senate has a secretary instead of a clerk. Reading, roll-call, engrossing, journal, file, and recording clerks are employed in generous numbers; provision is made for opening the sessions with prayer; and there are pages to scurry about on errands. A special school is maintained for the page boys who must, by the way, follow the honorable and to them trying convention of wearing knee breeches. The annual entertainment provided for the Senate pages is one of the colorful events of Washington.

THE COMMITTEE SYSTEM

Committees are less important in the Senate than in the House of Representatives, although their role should not be minimized. The smaller size of the Senate permits more of the business to be handled in the limelight of the floor. Besides there is some feeling that an assemblage of ambassadors should not entrust the most consequential matters to committees. Finally, the inclination of the Senators to disregard the recommendations of their committees at times does not make for the vigor to be observed in the committee system of the House.

The senatorial committees follow the same pattern that we have already noticed in the House, but there is one very important difference. **Types of Committees** Standing committees hold the main ring; conference committees are charged with ironing out differences with the House—and it may be added more often than not succeed in carrying the day; special committees are set up to look after nonrecurring matters.¹ But the committee of the whole, which occupies so prominent a place in the House of Representatives, is no longer in general use in the Senate—since 1930 it has, as a matter of fact, been employed only when treaties were under scrutiny.

¹ The Senate maintained eleven special committees in 1941. See the *Congressional Directory* for September, 1941.

The standing committees of the Senate literally go on forever, although they may be severely overhauled when there is a shift in party control.¹ But otherwise the majority of the committee members are never new, for only vacancies occasioned by death or retirement are filled from time to time. Despite the less striking role given to committees, the Senators see fit to keep a generous number of standing committees in operation. Prior to 1921 the Senate actually had more standing committees than the House of Representatives, but the artificiality of such an elaborate structure led to outspoken criticism and caused a reduction in numbers from seventy-four to thirty-four. Since that drastic pruning two decades ago, a further cut has been effected which brings the present number of standing committees to thirty-three.² Even this number is large, undoubtedly larger than it would be if the committee system were based entirely on the amount of work to be handled. As it is, there is the same prestige attached to committee chairmanships as in the House of Representatives, which serves to keep nonessential committees in existence. Only eight of the senatorial standing committees have enough to do to justify regular weekly meetings—the others meet only when the chairmen send out calls.

A half a dozen or so of the standing committees are important enough to be mentioned by name. The committees on Finance and Appropriations are always regarded as outstanding, although their preeminence is probably somewhat less noticeable than in the case of their counterparts in the House of Representatives: the committees on Ways and Means and Appropriations. Money bills are peculiarly associated with the lower house—indeed the Constitution specifies that “All bills for raising revenue shall originate in the House of Representatives.”³ The Senate Committee on Finance does not hesitate to make changes in the bills which are drafted by the Committee on Ways and Means, but it lacks the creative vigor of the latter. The Committee on Judiciary is always surrounded with prestige and has been especially in the limelight during the last decade. It considers not only bills which are aimed at overhauling or adding to

Standing
Committees

Outstand-
ing Senate
Committees

¹ On the place of committees in the Senate, see Robert Luce, *Legislature Procedure*, Houghton Mifflin Company, Boston, 1922, Chaps. 4-8; and J. P. Chamberlain, *Legislative Processes; National and State*, D. Appleton-Century Company, Inc., New York, 1936, Chap. 5.

² A list of these is conveniently available in the *Congressional Directory*.

³ Art. I, sec. 7.

the system of federal courts, but those which concern procedure. Judicial nominations are referred to it for consideration, while proposals to amend the Constitution may also go to this committee. The Committee on Foreign Relations is distinctly more powerful than its counterpart in the lower house because of the special authority conferred on the Senate in the ratifying of treaties. After a world conflict or on those occasions when far-reaching international agreements relating to commerce or other peaceful matters are in the offing this committee frequently overshadows all others. The committees on Interstate Commerce, Military Affairs, and Naval Affairs deal with bills which are suggested by their titles and during recent years have been busy enough to deserve first rank.

Senatorial committees are somewhat smaller than House committees, although there is less difference than the sizes of the two houses would indicate. The largest committees—for example those which deal with appropriations and foreign relations—have twenty-three members, while the smallest consists of only three Senators.¹ A gentlemen's agreement is worked out to determine how many of the members on each committee shall go to the majority party and how many to the minority party. The division varies from time to time, depending upon the relative strength of the two parties, but one may be certain that the dominant party will have a substantial margin. A body with less than one-fourth the membership of the House and something like three-fourths of the number of committees, which are not notably small in size, naturally permits individuals generous committee assignments. In practice individual Senators are not usually permitted to hold more than one of the ten most important chairmanships nor seats on more than two of these committees.² Otherwise, Senators may get themselves attached to half a dozen or so standing committees and commonly serve on as many as four or five.

The chairmen of the standing committees vary widely in prestige and influence. Except for the title, there is little that a judiciary, finance, or foreign relations chairman would have in common with a chairman of one of the committees which meets rarely. Not too long ago committee chairmen took upon themselves

**Member-
ship of
Standing
Committees**

¹ The Committee on Enrolled Bills.

² There is no rule to this effect, but a caucus resolution passed as long ago as 1919 makes such a limitation.

even more authority than they dare essay now—even to acting alone in the name of the entire committee.

The Senate theoretically elects its own committees, but this is a mere formality, for actual selections are made by the party organizations. Both of the major parties appoint committees on committees every two years which make recommendations to the party caucuses about filling vacancies which have occurred as a result of retirement or defeat at the polls. After the caucuses have passed on the assignments, the slates go to the Senate for formal approval. When vacancies occur as a result of death during a session the inner circle of the party organizations, particularly the steering committees, may handle the disposition. It should not, however, be supposed that the party organizations have too great leeway in deciding who shall receive the major assignments, for the seniority rule determines that. Even in those cases where it is clearly absurd to place Senators in chairmanships, seniority governs. For example, in 1941, a vacancy occurred in the chairmanship of the Committee on Military Affairs as a result of the death of Senator Sheppard. Seniority ordained that Senator Reynolds of North Carolina should take the position, despite the fact that he openly opposed the national defense program of the government and was the single member of that committee which voted against the extension of the period of selectee service.¹ The *New York Times* may have been unduly wrought up by the elevation of Senator Reynolds, but its castigation of the seniority rule deserves attention: "The seniority system results not merely in putting at the heads of committees, with a determining voice in policy, men who may be opposed both to the policies of the Government in power and of the majority in Congress; it not only prevents the ablest and most highly regarded men in Congress from reaching the positions of major responsibility, but it tends to lower the average quality of the membership of Congress by discouraging able men from becoming candidates."² Able men receive major appointments at times even under seniority and mediocre men may acquire reasonable competence as a result of experience. Yet there is something lacking in a system which ignores the rich experience in banking and international rela-

Selection of
Committee
Members

¹ Senator Reynolds opposed the lend-lease bill, the repeal of the arms embargo, and so forth. The *New York Times*, July 29, 1941, editorially characterized him thus: "In his years in Congress he has shown neither intellectual distinction nor ordinary good judgment."

² July 29, 1941.

tions of a Senator such as Dwight Morrow and consigns him to military affairs about which he knows little.¹

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¹ Mr. Morrow for many years was a partner in the J. P. Morgan firm. Later he came into the limelight as the very successful ambassador of the United States to Mexico.

CHAPTER XIX

A GENERAL VIEW OF THE POWERS OF CONGRESS

IF THE doctrine of separation of powers were strictly applied, Congress would exercise only legislative powers. As it is, most people identify Congress with the legislative process which will be dealt with in detail in the next chapter. No one can dispute the importance of lawmaking under the type of government which characterizes the United States, but it is not desirable to omit consideration of several other functions which are entrusted to one or both chambers of the legislative branch.

In some of the states which use the initiative, it is possible for the people to take steps which may eventually produce formal changes in the state constitutions.¹ But no provision is made for popular action leading toward amendment of the federal Constitution. Proposals to amend must be made by a two-thirds vote of Congress or by a national convention which Congress calls at the request of the legislatures of two-thirds of the states. As we have noted in discussing the formal amending process,² only the congressional method has actually ever been invoked. In addition, Congress has far-reaching duties in connection with expanding and interpreting the original Constitution—thus making it one of the most potent factors in the developing of the broad constitutional system under which the United States currently operates.³ Most of this is done through the passage of momentous statutes, although it is possible in certain instances to accomplish this end through the use of the treaty-making and other powers.

**Duties in
Connection
with
Changing
the Consti-
tution**

Perhaps the very routineness of the duties of Congress in connection with the election of a President and Vice-President blind one to their existence. No one can get very excited about the canvass which the two houses of Congress meeting together make of the electoral votes, for it has been known for some two months who the President and Vice-President would be.⁴ Nevertheless, if we should find ourselves with a party split, resulting in less than a majority of the

**Electoral
Duties**

¹ For a fuller discussion, see Chap. 36.

² See Chap. 4.

³ See Chap. 4.

⁴ See Chap. 13.

electoral votes cast for a single candidate for the presidency or vice-presidency, the importance of the electoral functions of Congress would be emphasized. How long the House of Representatives would be permitted to choose a President from the three candidates receiving the highest number of electoral votes or the Senate the Vice-President from the two most popular candidates for that office might be debatable.¹ There is some reason to believe that, should the multiple-party system prove at all enduring, some other provision would be made for the election of the two executive officers. But under the terms of the Constitution as it now stands Congress is entrusted with these potentially heavy responsibilities. In this connection, it may be recalled that Congress also has the authority to legislate on "the times, places, and manner of holding elections for Senators and Representatives,"² and that it judges the qualifications of its own members, including the validity of their elections.³

The administrative agencies of the Federal government are almost entirely the handiwork of Congress. Not a single one is provided for in any detail by the Constitution itself, and only the temporary or minor ones are the result of executive action. The form, the organization, and the powers to be exercised by administrative departments are all in most instances specified by act of Congress.⁴ Moreover, the fuel that runs these agencies comes only from congressional drafts on the Treasury, for no money can be paid out by any department except on the authority of Congress.⁵ The direction of the administrative services is primarily an executive function, but Congress from time to time sees fit to pass statutes requiring reports to be made directly to the legislative branch. Thus the Comptroller General has been made responsible to Congress rather than to the President. Resolutions are sometimes adopted which direct the administrative agencies to follow a certain course in a current situation. In so far as they encroach on the territory of the executive, these resolutions do not have the force of law, but merely indicate the opinion of the two houses of Congress as to what should be done.

¹ See Amendment XII. ² See the Constitution, Art. I, sec. 4. ³ See *ibid.*, Art. I, sec. 5.

⁴ If Congress authorizes the President to handle organization, he may, of course, arrange such matters. Thus in 1939 President F. D. Roosevelt formed the Federal Security Agency out of existing agencies dealing with public welfare. In 1942 he "stream-lined" the War Department after Congress had authorized reorganization to meet national defense requirements.

⁵ See the Constitution, Art. I, sec. 9.

However, when it comes to the use of money, the authority of Congress may be more compelling. Inasmuch as most of the momentous undertakings of administrative agencies call for the expenditure of money, the approval of Congress is essential. A considerable portion of the time and energies of both the Senate and House of Representatives is directed at problems which are primarily administrative in character, although they may involve the passage of a law.

Both houses of Congress are rather fond of setting up investigating committees of one kind or another, even though these same congressmen may hurl taunts at similar bodies created by the President. Most of these committees carry on investigations that pertain immediately to the legislative process—the Investigatory Activities courts have ruled that there must always be some connection between their labors and the problem of making laws.¹ However, almost any subject under the sun has at least a remote relation to the legislative process and hence Congress has considerable leeway. The spectacular and sometimes rather unfair investigations of the Dies Committee on Un-American Activities have a bearing on the creation of public opinion, the program of the Federal Bureau of Investigation, and divers other fields quite remote from lawmaking.² Similarly the committees which delve into the campaign expenditures of political parties and congressional candidates participate in the formulation of public opinion and the restraint of political corruption. The investigation of T.V.A. went beyond the gathering of material necessary for statute drafting.

APPOINTING POWER

The several hundred employees of the two houses of Congress are, of course, directly responsible to those bodies. The more than a million civil employees of the government are indirectly responsible to the legislative branch in that their positions are created by law, their salaries are paid out of funds appropriated by Congress, and in the case of the great majority their civil service status is the result of congressional action.³

¹ *McGrain v. Daugherty*, 273 U. S. 135 (1927).

² An illuminating article on the use of these committees during the years 1933-1937 is M. N. McGeary's "Congressional Investigations during Franklin D. Roosevelt's First Term," *American Political Science Review*, Vol. XXXI, pp. 680-694, August, 1937.

³ For a fuller discussion of this point, see Chaps. 14 and 24.

In relation to the 15,000 or so officials who are nominated by the President and confirmed by the Senate, the congressional role is especially outstanding. Theoretically, these appointments originate in the executive office, but, as we have previously noted, the vast majority of them really fall under the jurisdiction of members of Congress, especially Senators.¹

Senatorial Confirmation of Appointments

The President is far too busy to investigate the various claimants to the collectorship of internal revenue in New Orleans or the federal marshalship in Des Moines. However, Senators and Representatives from the states in which those cities are located probably display a good deal of interest in these positions. Senators who belong to the President's political party do not wait to be asked which candidate they favor—they inform the executive office whom they desire and except in rare instances they get their way. If there are no Senators from a state of the same political party as the President, Representatives who claim that party may be permitted a similar privilege. Or even when there are party Senators, an agreement may be worked out under which the Senators share the patronage with the Representatives.

When the nominations reach the Senate from the office of the President, they are usually referred to an appropriate committee for investigation and recommendation. If a former Senator is being honored, this rule may be waived and immediate confirmation may be given by the Senate as a whole. Since the number of Senators nominated is not large, this latter procedure is not, however, commonplace. It should be noted that there is no single committee on nominations in the Senate and that nominations consequently are distributed on the basis of nature of office. Thus, nominations for judicial posts go to the Committee on Judiciary; those involving seats on the Federal Trade Commission or Interstate Commerce Commission find their way to the Committee on Interstate Commerce; while positions as ambassador or minister must be considered by the Foreign Relations Committee. The attention given a nomination may be purely routine or it may occasion debate extending over weeks. Hearings may be held at which not only the person involved will be called upon to testify, but opponents and supporters may be given a chance to air their views. If the nomination represents the choice of a member of the Senate there is little likelihood of any

Procedure of Confirmation

¹ See Chap. 14.

protracted discussion in the committee, for the convention of senatorial courtesy ordains that the judgment of Senators is always good. However, if the President has ignored the Senators directly concerned or if he has on his own initiative chosen for an office of national scope a person who does not suit the Senate, there may be a great to-do. Usually even in these cases a strong President will eventually win out, although weeks and even months may intervene between the nomination and confirmation. Still, refusals to confirm have not been rare.

The recommendations of the committee to which a nomination is referred for report can, of course, be debated on the floor, but they are likely to be accepted, unless there has been a close split among the members of the committee. If a quorum is in attendance, confirmation requires only an ordinary majority vote. If the Senate adjourns without agreeing to an appointment, the position is vacated and the President must make some other arrangement.

JUDICIAL FUNCTIONS

All of the courts below the Supreme Court have been created by Congress, while even though the highest tribunal is specified in the Constitution, Congress has decided its composition, organization, and appellate jurisdiction. At one time Congress made the rules under which the courts operate and even now it has that authority, although it prefers to delegate that task to the courts themselves.¹ The money to run the courts is appropriated by Congress; the laws which they assist in enforcing are passed by Congress; and the judges who constitute their benches have to be confirmed by the Senate. Finally, Congress itself is charged with the direct exercise of judicial power in connection with the impeachment process.

**General
Judicial
Functions**

The impeachment of public officials has long been established in those countries which modeled their political institutions after those of England. It must not be confused with the ordinary procedure by which those accused of criminal offenses are tried. Although in many respects it resembles that procedure, it does not take its place; that is, impeachment does not prevent ordinary judicial trial on the same charges.

**Nature of
Impeachment**

¹ Two volumes of procedural rule were drafted by the courts in 1937 and published in the form of *United States Reports*.

The Constitution is not entirely clear as to what officers of the Federal government are subject to impeachment. Military and naval officers are obviously not included, being subject to court-martial. The Constitution merely reads that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."¹ The question early arose as to whether "civil officers" is intended to include members of the legislative branch. While there may be some doubt still as to the exact status of congressmen in connection with impeachment charges, it was decided for all practical purposes in 1798 that members of Congress are not subject to the process. They may be judged by their own colleagues and if found wanting may be expelled from their seats in extreme cases—consequently there is no crying need to bring them under impeachment.² In addition to the President and the Vice-President, it is at present understood that cabinet members, federal judges, and other high administrative officials are subject to impeachment. Although lower officers might in theory be impeached, the fact that they can be removed from office and prosecuted in the regular courts would scarcely justify the use of the cumbersome impeachment machinery. The United States has been relatively fortunate in its experience with its public officers—only a dozen cases of impeachment have been necessary in more than a century and a half and of those no more than four have resulted in conviction.

The Constitution is clear enough when it sets down treason and bribery as the basis for impeachment; it is not so clear when it adds "other high crimes and misdemeanors." In general, it is understood that only serious offenses of a criminal nature can be made the basis of impeachment proceedings. But what of the recent case in which the Senate found Judge Ritter not guilty on eight specific charges involving splitting of bankruptcy fees, the acceptance of free accommodations from bankrupt hotels in Florida, and so forth, and then convicted him on a final omnibus charge which detailed the earlier counts and alleged that his conduct

**Who May
Be Im-
peached?**

**Basis of
Impeach-
ment**

¹ Art. II, sec. 4.

² In 1798 in the case of William Blount, a Senator from Tennessee, such a precedent was established. Blount, having been charged with conspiracy to provoke Louisiana and Florida to revolt against Spain and to turn themselves over to Great Britain, was then expelled from the Senate. When the House passed articles of impeachment, the Senate refused to try Blount on the ground that, having expelled him, it no longer had jurisdiction.

had been unbecoming to the bench? Judge Ritter attempted to have the Supreme Court intervene on his behalf on the ground that conduct unbecoming a judge was not a valid charge on which to base articles of impeachment, but he was refused a hearing. It would appear, then, that the earlier concept of an adequate basis has been somewhat expanded during the last decade.

The House of Representatives is given the first responsibility for impeachment proceedings, for charges must be brought on its floor and articles of impeachment must be voted by it before a trial can be conducted in the Senate. Notwithstanding the very small number of impeachment cases, it is not at all uncommon for Representatives to make charges against judges and administrative officials from the floor of the House. Indeed crackpot members have been known to press charges against the same official repeatedly. If the House decides the charges are worthy of investigation, it sets up a special committee to consider the case and make a report. This report is read in the House, discussed, and if adopted by a majority, results in voting of "articles of impeachment" which specify with what the accused is charged. These articles are sent to the Senate, which is in turn obliged to fix a date for itself to sit as a court to examine charges. Ordinarily several weeks or months are permitted to intervene before the trial is begun, which gives the accused and the managers appointed by the House to be prosecutors an opportunity to prepare their arguments and evidence. Furthermore, it saves many trials, for most of those who see ruin staring them in the face resign after articles of impeachment have been voted. This was what happened in the recent cases of Judge Manton of the Circuit Court of Appeals in New York City, several district judges who abused their bankruptcy authority, and a very peppery district judge in Illinois who during the 1930's addressed most of those who came before his court with profane language.

Steps in
Impeach-
ment Pro-
ceedings

If the accused does not resign, the Senate at the date fixed starts to hear the case. The presiding officer of the Senate acts as judge, but if the President is being tried, the Chief Justice of the United States occupies the chair. Senators take an oath to give due consideration to the evidence; managers from the House of Representatives present the case for the government; and the counsel of the accused attempt to rebut these charges. After these proceedings, the Senators retire to deliberate as a jury. If two-thirds of their number agree that the

accused is guilty, it is said that a conviction has resulted; otherwise the charges are dropped.

Whenever impeachment charges result in conviction, the accused is removed at once from the public office which he holds. If the Senate stipulates, the accused may in addition be prevented from holding "any office of honor, trust or profit under the United States" in the future. The President cannot pardon those convicted under this procedure. Subsequent trial in an ordinary court may be resorted to in cases in which imprisonment seems to be necessary in addition to the disgrace of removal from office.¹

The conduct of a number of federal judges during the 1930's focused the attention of the country on the inadequacy of the process of impeachment. "Merchants of justice," fee-splitters, benefactors of former law partners and relatives, and recipients of valuable gifts were by no means the rule among the federal judges, but they were too numerous to be ignored. The cumbersome process of voting articles of impeachment and the even more onerous burden imposed upon the Senate convinced many people that a modification was required. The Judiciary Committee of the House of Representatives finally reported in 1937 the Sumners bill which provided that federal and circuit district judges, who seemed to be causing most of the trouble, might be tried and removed from office by three circuit court of appeals judges to be designated by the Supreme Court. This bill did not pass, but a similar proposal was accepted by the House in 1941.²

INTERNATIONAL AFFAIRS

Congress as a whole has a general interest in the international relations of the United States, although that field is especially shared by the President with the Senate only rather than with Congress as a whole. The President is likely to refer to the international situation in his report on the state of the nation at the beginning of each session of Congress. Appropriations for meeting the expenses of the foreign service must be approved by both houses, which means that not only recurring items like salaries, but also the purchase of new embassies, legations, and consulates must be authorized. If a treaty calls for the expenditure of public funds—as it is very likely to—then again both

¹ For an extended book on this subject, see A. Simpson, *A Treatise on Federal Impeachments*, Law Association of Philadelphia, Philadelphia, 1917.

² Under this Bill the Attorney General would prosecute such cases.

houses of Congress have a responsibility. During the recent critical developments in the international field, there has been considerable accentuation of congressional activities incident to that sphere. The Neutrality Act and the Lend-Lease Act were, of course, the handiwork of both houses of the legislative branch. A formal declaration of war requires the consent of both the Senate and the House of Representatives, although an actual state of war may be brought about by the President acting alone in his capacity as commander-in-chief of the naval and military forces.

In addition to the general oversight which Congress exercises in the international area, the Senate has the important function of ratifying treaties which the executive has negotiated with one or more foreign countries. The President is not legally obliged to consult the Senate during the negotiation of a treaty, but wise chief executives usually follow that policy as a matter of course. A treaty accomplishes little unless it is ratified; moreover, the refusal of the Senate to approve a treaty may occasion the President himself great personal embarrassment.¹ It is much more probable that the Senate will act favorably on a treaty submitted to it if senatorial leaders have had a hand in drafting the treaty. We have noticed the custom of senatorial courtesy in connection with the confirming of appointments.² There is something of the same loyalty accorded fellow Senators who have had a good deal to do with the negotiation of a treaty. Hence, Presidents often appoint Senators as members of commissions charged with assisting in the drawing up of important treaties to which the United States is a party.³ Or if that is not done, the chief executive at the very least will seek to keep senatorial leaders informed of what is going on, even to the extent of asking their advice and attempting to secure their approval of every major step which is taken.

**Ratifica-
tion of
Treaties**

¹ After the Senate refused to ratify the Treaty of Versailles the name of President Wilson became the byword of contempt in many sections of Europe, although he had been greeted as a demigod before.

² See pp. 396-397.

³ Although Senators helped negotiate the treaty with Spain in 1898, the treaty of the Washington Naval Limitations Conference in 1922, the treaty of the London Naval Conference in 1930, and the treaty of the World Economic Conference in 1933, their participation has been criticized by some. It seems to some that this action involves a destruction of the theory of separation of powers and a violation of the spirit of the constitutional limitation on legislators holding other offices in the government. However, the method does provide effective machinery for the President to secure the necessary "Advice and Consent."

After a treaty has been negotiated, either by a special commission appointed for that purpose by the President or through the regular diplomatic channels, the Constitution¹ requires it to be sent to the Senate. Upon arriving there, by the rules of the Senate, it is referred to the influential Committee on Foreign Relations for study and recommendations. This committee, which always has among its members some of the most independent and powerful Senators, does not in any sense consider its function to be that of automatically rubber stamping a treaty.² Indeed, it regards itself as charged with far-reaching responsibility in ascertaining that the treaty safeguards the best interests of the United States. With little inclination to be hurried, the Committee on Foreign Relations often accords the most minute attention to the various provisions of a treaty as well as to the general policies involved. Discussion may run on for weeks and even months before the committee is ready to report to the Senate. When a report is finally ready, it may recommend acceptance of the treaty without change, categorical refusal to ratify, or approval after certain changes have been made or subject to specified reservations. If the treaty is at all controversial, it is quite probable that the committee members will not see eye to eye on its merits or defects and consequently will divide on recommendations to the Senate. Hence, there may be a majority report and one or more minority reports.

When the Senate gets around to hearing the report of the Committee on Foreign Affairs, it may order the newspaper men and public to be excluded from its chamber if a majority so orders; but since 1929 a rule has stipulated public sessions unless specific contrary action is taken. The debate occasioned by the committee report may be of full-dress character running over days and even weeks, or it may be unimpassioned and brief. Secretary of State Hay once likened a treaty ratification to a bull in a bullfight, remarking that one could be certain that "it [the treaty] will never leave the arena alive."³ Yet the Senate has ratified about 80 per cent of the treaties sent to it without reservation and has refused outright only slightly more than sixty

¹ See Art. II, sec. 2.

² For detailed discussions of the senatorial attitude, see D. F. Fleming, *The Treaty Veto of the American Senate*, G. P. Putnam's Sons, New York, 1930; and R. J. Dangerfield, *In Defense of the Senate; A Study in Treaty-Making*, University of Oklahoma Press, Norman, Okla., 1933.

³ See W. R. Thayer, *Life and Letters of John Hay*, 2 vols., Houghton Mifflin Company, Boston, 1920, Vol. II, p. 393.

during the entire history of the country. Of the somewhat over 1,000 treaties that have been negotiated with the United States as a party, just over 150 have been subject to senatorial insistence upon partial revision or reservation.¹

The ordinary citizen is usually quite vague about the frequency with which the United States enters into treaty relations with other countries. A casual guesser may place the number in the tens of thousands, while one who recalls the treaties that have occasioned newspaper headlines and spirited Senate debate may limit his estimate to a few dozen. Actually the treaty-making power is used moderately rather than generously or parsimoniously. During a time when the world was enjoying peaceful conditions in a large measure, 1924-1930, the Senate ratified 106 treaties with forty-one countries—an average of almost twenty per year. It will shock those who have the notion that a treaty is always the cause for senatorial wrangling and extended debate to be told that in 1934 the Senate ratified twelve treaties in the space of one hour!²

The Constitution specifies that two-thirds of the Senators must vote affirmatively in order to ratify a treaty, although a bare majority may accept the proposal of the House of Representatives to declare war, appropriate billions of dollars for peacetime or national emergency projects, or commit the United States to far-reaching undertakings, such as old-age annuities. This has been interpreted somewhat less strictly than might have been the case, however, for the two-thirds rule applies to those who are present in the Senate chamber when the vote is taken rather than to the entire number of Senators.³ Yet even so the rule is burdensome, particularly when treaties of more than routine character are being considered. While more than 80 per cent of the treaties have been finally ratified by the Senate, a number have had a tight squeeze getting through. Moreover, the approximately sixty which have been turned down include some of the most important treaties the United States has negotiated.⁴ The foreign relations of the United States

¹ See D. F. Fleming, "The Role of the Senate in Treaty-Making," *American Political Science Review*, Vol. XXVIII, p. 583, August, 1934.

² See Frederic A. Ogg and P. O. Ray, *Introduction to American Government*, rev. ed., D. Appleton-Century Company, Inc., New York, 1938, p. 599.

³ Of course, a quorum must be present.

⁴ On this subject, see W. S. Holt, *Treaties Defeated by the Senate*, The Johns Hopkins Press, Baltimore, 1933. Among the more recent important treaties the Senate has refused to ratify are the Taft-Knox arbitration treaties of 1911, the Treaty of Versailles in 1920,

frequently occasion a great deal of agitation on the part of those who would have the country play ostrich and hide its head in the sands of the world. And it may be added that there is probably no field in which the old aphorism that "one enemy is equal to one hundred friends" in vigorous action is more applicable than here. Let an organization of provincial-minded persons be started and the housetops will ring with the most dire prophecies of ruin. Senators who enjoy the excitement of a good battle and the public attention attracted by spectacular discussion are certain to enter the arena. The result is sometimes virtually a knockdown and drag-out fight over a matter which may or may not be of great significance.

While it is an exaggeration to declare that the Senate's treaty power has been sweepingly abused, nevertheless, there is much to be said for reducing the requirement for assent from the present two-thirds to an ordinary majority.¹ Democratic government means government by the majority of the people. When a President, a Supreme Court, a political organization, or a Senate ignores the wishes of the majority of the people and follows preconceived notions, vested interests, or the demands of a vociferous minority, democracy is dangerously challenged. Moreover, the stipulation that two-thirds of the Senators must approve treaties places an unwarranted premium on international as against internal affairs. No well-informed person will deny the great importance of wise management of our international relations. But at the same time it must be borne in mind that domestic problems—for example, widespread unemployment, an unfair distribution of the national income, and a rapidly mounting public debt—are at least of equal consequence. The latter may all be dealt with by an ordinary majority vote; why then a two-thirds requirement for treaties?² One salutary result of such a change might well be the discouragement of "backdoor" practices which are scarcely in keeping with democratic political institutions. A President fails to get a treaty ratified, so he falls back on a *modus vivendi* accomplishing the same end, as Theodore Roosevelt the World Court treaties in 1926 and 1935, and the St. Lawrence Waterways treaty in 1934.

¹ R. J. Dangerfield, *op. cit.*, goes far in clearing the Senate of any grave charges.

² Early in 1942 Senator Pepper of Florida stated that he intended to propose a constitutional amendment which would permit a majority of the Senate, or possibly a majority of both houses, to ratify treaties. He said: "We let a majority of Congress take us into war, why shouldn't a majority of Congress say what course we shall pursue in the peace that must follow?" See the *New York Times*, January 25, 1942.

did in the case of Santo Domingo. Franklin D. Roosevelt was impelled in 1941 to have a St. Lawrence waterways-development agreement with Canada authorized by ordinary statute after the Senate had turned down a treaty dealing with the same subject in 1934.

Although the abandonment of the two-thirds rule would serve a useful purpose, it still does not meet some of the objections that have been raised by competent persons. Why should the House of Representatives be left out of the picture? Its membership is certainly much more representative of the entire people than that of the Senate. The House has to approve legislation and appropriations carrying out the provisions of treaties. There is much to be said in favor of a plan which would give the Senate and the House of Representatives an equal share in ratification and which would substitute an ordinary majority requirement for the present two-thirds rule. This would put treaties on a par with federal laws.¹

**Proposals
to Extend
the Re-
sponsi-
bility for
Treaties
to the
House**

LEGISLATIVE POWERS

Although the Constitution disposes of certain very important matters with a few words, it devotes a lengthy section² to an enumeration of the legislative powers of Congress. Some eighteen different categories are laid down in which Congress is granted the authority to enact laws. A third section,³ containing seven still-effective paragraphs, proceeds to detail the prohibitions which are imposed on what Congress may do. The general conclusion is that Congress may exercise those powers which are expressly granted and not definitely prohibited and that all other fields remain within the jurisdiction of the states.

**Constitu-
tional
Provisions**

Within a few years after the founding of the republic it became apparent that Congress desired to pass laws relating to matters that the Constitution did not mention. Public opinion favored central handling of problems which the framers had either not anticipated at all or had assumed could be suitably managed by the states. As a result of the liberal attitude of the Supreme Court it has been possible for Congress to cope with most of the difficult problems as they have arisen, although the Supreme Court has not always

**Implied
Powers**

¹ Treaties are, of course, placed by the Constitution on the same legal plane as federal laws. They are certainly not on a par with federal law, however, as respects legislative procedure or democratic ratification.

² Art. I, secs. 7 and 8.

³ Art. I, sec. 9.

been willing to adjust itself to new enlargements as rapidly as Congress might have desired. The significance of the doctrine of implied powers is tremendous—it is, indeed, impossible to conceive of what might have happened had a different ruling been made by the Supreme Court.¹

There has sometimes been a vigorous controversy as to whether Congress has inherent authority to enact legislation. The Constitution **Inherent Powers** itself has nothing to say on this question beyond providing that Congress shall have power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.”² While some persons have argued that all legislative bodies have inherent powers by their very nature and that the “necessary and proper” clause quoted above gives constitutional basis for such authority, there has been no general acceptance of the doctrine. Inherent powers are, at least in general, lodged with the states rather than with the Federal government under our constitutional system. The theory most commonly accepted by the framers was that the Federal government was to be one of enumerated powers delegated by the sovereign states. This theory, explicitly stated in the Tenth Amendment, would seem to deny completely any inherent powers. The Supreme Court has never seen fit to deal fully with the controversy, although it has included in its opinions a few dicta which seem to give comfort to the defenders of inherent power.³ The “necessary and proper” clause is

¹ For additional discussion of this important topic, see Chaps. 1 and 4.

² Art. I, sec. 8.

³ The doctrine of inherent powers is based on an argument of James Wilson, made before his work in the Philadelphia convention of 1787 and before he became a justice of the United States Supreme Court: “Though the United States in Congress assembled derive from the particular states no power, jurisdiction, or right which is not expressly delegated by the Constitution, it does not then follow the United States in Congress have no other powers, jurisdictions, or rights than those delegated by the particular states. The United States have general rights, general powers, and general obligations, not derived from any particular states, nor from all the particular states taken separately; but resulting from the union of the whole.” James Wilson, *Works*, ed. by C. M. Andrews, Callaghan and Co., Chicago, Vol. I, p. 557. In *Kohl v. United States*, 91 U. S. 367 (1875), upholding the right of the Federal government to exercise eminent domain; in *Fong Yue Ting v. United States*, 149 U. S. 698 (1893), upholding the right of the Federal government to exclude aliens; and in *United States v. Kagama*, 118 U. S. 375 (1886), upholding the right of the Federal government to organize and govern territory, the court seems to have based its arguments on the doctrine of inherent powers as well as on the doctrine of implied powers. In *Jones v. United States*, 137 U. S. 202 (1890), the Court upheld the right of Congress to acquire territory (certain guano islands) almost completely by the doctrine of inherent powers.

After these cases of the 1880's and '90's, however, in *Kansas v. Colorado*, 206 U. S. 46

usually interpreted as upholding implied powers and not as upholding inherent powers.

The form which the inherent-powers controversy has recently taken has centered around the clause of the Constitution reading: "Congress shall have the power . . . to provide for the common defense and general welfare of the United States."¹ The argument has been that the Federal government possesses powers which are neither specifically enumerated nor implied, yet which are not particularly inherent in a sovereign state. Rather these powers arise from the admonition to provide for the general welfare and are in an indirect sense deduced or "implied" from it. When states possess the residual right to handle a certain problem, such as agricultural adjustment or unemployment relief and are totally incapable of handling such a problem, then it devolves upon the Federal government to assume the power to attempt to relieve the situation. For some time this argument made no impression upon the Supreme Court. However, in the dissenting opinion in *United States v. Butler*² Mr. Justice Stone used the argument to support the Agricultural Adjustment Act and in *Steward Machine Company v. Davis* and *Helvering v. Davis*³ Mr. Justice Cardozo, speaking for the majority of the court, used the "general welfare" clause to justify the Social Security Act. Thus while the doctrine of inherent powers long made little impression upon the court, the end which supporters of the doctrine desired, that is, the expansion of federal power, in spite of the Tenth Amendment, has recently been achieved in a large measure by the liberal interpretation of the "general welfare" clause.⁴

During the last decade or so when emergencies of one kind or another have been almost the rule, some attention has been given to the so-called "emergency powers" of Congress. Inasmuch as Congress has had to pass laws on subjects which are far afield from its ordinary paths, many observers have concluded that

The
"General
Welfare"
Clause

Emergency
Powers

(1907), the Court in an *obiter dictum* sweepingly repudiated the doctrine of inherent powers. Nevertheless, in *United States v. Curtiss-Wright Export Corporation*, 299 U. S. 304 (1936), it again seemed to some to give aid and comfort to those who cherish inherent powers.

¹ Art. I, sec. 8. ² 297 U. S. 1 (1936). ³ 301 U. S. 348 (1937); 301 U. S. 619 (1937).

⁴ See on this subject J. F. Lawson, *The General Welfare Clause*, author, Washington, 1934; J. W. Holmes, "The Federal Spending Power and States Rights (A Commentary on *U. S. v. Butler*)," *Michigan Law Review*, Vol. XXXIV, p. 637; R. E. Cushman, "Social and Economic Control through Federal Taxation," *Minnesota Law Review*, Vol. XVIII, p. 757, June, 1934. See also Chap. 25 below.

there is a reservoir of emergency powers which may be tapped when the occasion demands. If by this is meant that Congress has special powers during an emergency that could not be exercised at any other time, there is little foundation for such an assertion.¹ Of course, it is true that Congress takes steps during periods of internal or international emergency that are not thought of during more normal times. But the powers which Congress wields at these acute moments are not special powers at all—they are powers which might be exercised at any time but which there is little or no need to use ordinarily. As the Court said in *Wilson v. New*: "Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed."² The effect of an emergency is not to confer new powers, but rather to encourage a liberal interpretation of old powers. Hence Congress itself goes to the extreme limits of the powers granted it, while the Supreme Court, influenced to some extent no doubt by the exigencies of the time and the flood of public opinion, will be as liberal as possible in permitting the inclusion of this action under the broad outlines of a well-recognized grant of power.³

One explanation of the enlarged role of Congress during periods of great difficulty is to be found in the permissive powers which the Constitution confers. If all powers had to be made use of at all times, then, of course, Congress would presumably be as busy during times of world peace and domestic prosperity as it has recently been. However, some of the enumerated fields in regard to which Congress passes laws are not in the mandatory class—the Constitution merely says that "Congress shall have the power," not that it must constantly use that power. As a matter of fact, most of the powers which Congress enjoys are permissive in character, although they may be regularly made use of. Mandatory powers are compulsory only to the extent that Congress is conscientious enough to obey the Constitution, for there is no machinery provided for enforcing obedience. Therefore, if Congress does not reapportion the seats in the House of Representatives after each decennial census, it has definitely ignored its constitutional obligation, but nothing

**Permissive
and Man-
datory
Powers**

¹ In *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398 (1934), the Supreme Court specifically said that "emergency does not create power."

² 243 U. S. 332 (1917).

³ See on this subject J. P. Clark, "Emergencies and the Law," *Political Science Quarterly*, Vol. XLIX, pp. 268-283, June, 1934.

positive can be done immediately to compel the requisite action.¹

In examining the role of the states in the government² it was pointed out that although they have lost in large measure the power supposedly reserved to them, they are actually busier than at any previous time. The powers which the states have lost have been for the most part acquired by Congress, but they have fallen into the concurrent rather than the exclusive category.

**Exclusive
and Con-
current
Powers**

In other words, Congress is charged with two distinct types of authority: (1) powers which it exercises alone and without interference or assistance from the states, and (2) powers which it may wield but which are also shared with the state governments. Congress has the sole authority to legislate in regard to the coinage of money, the regulation of foreign and interstate commerce, immigration, and naturalization.³ In such fields as bankruptcy it could have the exclusive power to legislate if it chose to occupy the entire territory, but it frequently will leave at least a little scope for state action.⁴ Finally, there are numerous areas in which Congress and the state legislatures are both very active. Business, labor, welfare, transportation, electricity distribution, agriculture, mining, conservation are only a few of the fields over which both nation and state have partial jurisdiction.

The police power, which covers public health, public safety, and public morals, has long been identified with the states. Indeed, the Supreme Court in refusing to uphold the child labor law of 1916 based its attitude largely on the effect that a different decision would have upon the police power which seemed to be the last refuge of the states.⁵ The pressures shoving the national government into this last remaining domain of the states have been so

**Federal
Police
Power**

¹ During the late 1920's attempts were made to have the courts intervene, but without success. Of course, public opinion may have some effect or an election may impose a penalty.

² See Chap. 2.

³ Of course, states in the legitimate exercise of their own power may enact laws which have an indirect effect on these subjects; these laws are, however, in no sense regulation and the Supreme Court has declared unconstitutional those which seem to partake of the nature of regulation.

⁴ For many years the states had almost a free hand here, but at present the Federal government is distinctly dominant as far as bankruptcy is concerned.

⁵ See *Hammer v. Dagenhart*, 247 U. S. 251 (1918), in which the Court said: "The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in the exercise of police power over local trade and manufacture." In accord with expansion and development of the powers of Congress in 1941 this case was specifically overruled. See *United States v. F. W. Darby Lumber Company*, 85 L. Ed. 395 (1941), which upheld the Wages and Hours Law.

irresistible during the last twenty years that not even the Supreme Court could stem the tide. Acting under powers implied from the commerce clause, the taxing power, the authority over the mails and federal property, and other enumerated grants, Congress has recently set up safety standards to be observed by interstate buses, empowered an F.B.I. to stamp out public enemies, appropriated money for the United States Public Health Service to wage war on venereal disease, and regulated the purity of food and drugs. It should be noted that the so-called "federal police" power is thus far at least not a direct power of the national congress, as it is in the case of state legislatures. Its use is rather derived or implied from enumerated powers attached to Congress.

As we have pointed out above,¹ the Constitution not only grants powers to Congress but also lists certain powers that are strictly prohibited. Most of these lack the general importance which is characteristic of the positive grants; several of them were inserted because of iniquitous conduct of colonial legislatures which the framers remembered all too well. Others were borrowed from the English prohibitions, originally intended to safeguard the people from the tyrannical assaults of Parliament. It would not seem that many of them cause any particular feeling of inhibition or frustration on the part of Congress at present. It is conceivable, of course, that Congress might like to grant titles of nobility, pass bills of attainder and *ex post facto* laws, and provide for the permanent abandonment of the historic writ of habeas corpus, but the probability is not impressive. On the other hand, it is possible that direct taxes² and duties on "articles exported from any state"³ might be levied by Congress during its search for additional revenue, were it not for the constitutional barriers.

A glance at the powers specifically granted to Congress by the Constitution gives one only a partial understanding of the extent of the authority actually exercised today. Two of the eighteen express powers relate to levying taxes, spending public money, and borrowing on federal credit; a third succinctly brings in foreign and interstate commerce. These three

**Limitations
on the
Legislative
Power**

**The Broad
Scope of
Federal
Legislative
Authority**

¹ See p. 405.

² Direct taxes are not absolutely prohibited but must be apportioned among the states according to population. This makes their use scarcely feasible at present, although during the Civil War an attempt was made to employ them.

³ Art. I, sec. 9.

items alone have been expanded so amazingly that, despite the six lines of type which they require in an ordinary printed copy of the Constitution, they now constitute the basis for hundreds and even thousands of far-reaching statutes which Congress has from time to time enacted. The commerce clause itself has been invoked again and again during the past decade to justify the regulation of business practices, the protection of organized labor, the regimentation of the coal-mining industry, and the stabilization of stock and grain markets. A fourth power specifically given authorizes congressional action prescribing uniform naturalization and bankruptcy rules, while the fifth and sixth relate to coinage, counterfeiting, and a system of weights and measures. A seventh power confers the right to "establish post offices and post roads"; an eighth constitutes the basis for patent and copyright laws; and the ninth and tenth relate to the establishment of inferior federal courts and the defining of piracies, felonies committed on the high seas, and offenses against international law. In view of the relative importance which has long been assigned to peaceful pursuits it is somewhat surprising to find the next seven of the specific grants to Congress related to the armed forces, war, and the national defense against external enemies. The last two items are of comparatively minor import. The first gives the power to legislate over the District of Columbia and in regard to public buildings and forts located in the states, while the latter sums up the authority already granted under the "necessary and proper" clause. Although during the early 1930's there was some feeling that Congress lacked adequate powers with which to cope with the complicated problems confronting the United States, such expansion has now taken place that there is little basis for such fears. Indeed, the chief apprehension in many minds at present seems to be that too much responsibility has been loaded on Congress, especially in those fields which were long left to private and state control.

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CHAPTER XX

THE MAKING OF LAWS

PHYSICAL SETTING

THE formal process of lawmaking is carried on in the chambers of the House of Representatives and the Senate which are located in the two wings of the Capitol Building in Washington. When the houses are in session, their flags are displayed over their respective wings. While these quarters perhaps lack the rich historic associations that are attached to the halls of the English House of Commons and House of Lords and the Chamber of Deputies and Senate of the Third Republic of France, they are, nevertheless, more commodious and modern than most of these European halls. And having been in continuous use ¹ for more than a century, they are associated in the minds of Americans with many events of great historic importance.

Congressional
Chambers

The House of Representatives occupies a large room in the south wing of the Capitol which is characterized by mahogany, black leather, eagles, and neutral walls. At one time individual desks were provided members, but the enlargement in membership many years ago necessitated the substitution of chairs. The members of the majority party are assigned seats to the right of the Speaker, while the minority members fill as much of the left side as they can. Although individual seats are assigned, members pay very little attention to this arrangement and sit wherever they like on their side of the chamber. In front there is the marble dais of the Speaker, with tables just in front and below the Speaker for the reading, journal, and certain other clerks. The mace, which is the symbol of authority, is placed on a marble pedestal to the right of the Speaker's chair when the House is in formal session. Around the four sides of the hall are galleries for the press, diplomatic corps, President, members' relatives, and the general public. Strangely enough the seats in the ordinary gallery were in such poor repair as recently as 1940 that many of them could not be used, despite the demand for space. The

House
Chamber

¹ Except for adjournments and brief repair periods.

acoustics until recently were so poor that only "leather-lunged" members could be heard at all distinctly, but a modern loud-speaking system has corrected that defect to a considerable extent. A very efficient air-conditioning plant provides a comfortable atmosphere even on the hottest days. The several doors of the House chamber are invariably carefully guarded by attendants who permit admission only to members and former members. Conveniently outside the hall there are lobbies which are reserved for the use of members and their friends, while not far away is the ornate room of the speaker. In the basement there is a restaurant, barber shop, and other facilities for the use of the Representatives.

The hall used by the Senate is rather similar in appearance to that of the House, except that it is smaller and less crowded. Members **Senate Chamber** occupy their assigned desks more faithfully than do the Representatives their seats, but even so they move about frequently and sit here and there for a few moments of conversation with a colleague. The majority occupies the space to the right of the presiding officer and the minority to the left as in the House. The dais in front which provides a seat for the presiding officer and tables for the clerks resembles that in the House chamber. There are the same galleries, lobbies, and corridors, but the presiding officer's room can be entered immediately from the Senate chamber itself. Restaurant and other facilities are provided, as in the case of Representatives.

Much of the actual work of Congress is carried on in committee rooms rather than on the floor of the houses. All of the important **Committee Rooms** committees of the House and the Senate have rooms either in the Capitol itself or in the modern office buildings which flank the Capitol. These contain desks for the employees of the committees, tables and chairs for committee meetings, filing cabinets, and other equipment. They are reasonably adequate for their purpose, although far less elaborate than the conference rooms of the new departmental buildings.

Each Senator and Representative occupies a suite in the Senate Office Building which is connected to the Capitol by subway or in one **Individual Offices** of the two House of Representatives Office Buildings. Outer rooms provide space for clerks and secretaries, while inner quarters are available for private offices and conferences. These congressional offices lack the ornateness and the spaciousness of some of the sumptuous offices in the new Justice, Interior, and Commerce

buildings, but they are nonetheless quite adequate. The political work of the members of Congress may be divided between these offices and the Capitol itself; most of the direct lawmaking functions are confined to the committee rooms and the legislative chambers. But studying reports, interviewing pressure agents, and interchanging opinion with constituents, all of which have an important bearing on the legislative process, are carried on to a considerable extent in the suites of offices.

FORMS OF LEGISLATION

Whether Congress be elaborating the structure of government, enlarging the powers of a particular agency, appropriating money, or levying taxes, it does it by enacting laws. That is not to say **Bills and Resolutions** that every action of Congress necessarily involves the use of the lawmaking power, for the two houses may adopt concurrent resolutions which express an opinion but do not have the force of law. However, by far the greater part of the work the Senate and the House of Representatives handle is transacted through the medium of laws. Some of these originate as bills and others as joint resolutions, which Robert Luce has described "as really bills and in procedure are treated as-bills," adding that "opinion as to what a joint resolution might include has changed from time to time."¹ For all practical purposes the two are scarcely to be distinguished in this day, although the latter are in general far less common than the former and deal with matters of temporary and as a rule of minor moment. There has been a good deal of criticism of this dichotomy, which is for the most part quite artificial. As far back as 1871 Hannibal Hamlin inquired "why we should have our statutes encumbered with legislation headed by different modes of enactment."² Charles Sumner, James G. Blaine, and James A. Garfield all advocated dispensing with the distinction between bills and joint resolutions, but the two types have persisted unto this day. Congressman Luce pointed out some years ago that the supposedly temporary and minor role of joint resolutions could not be depended upon by lawyers, for "experience proves that permanent provisions do sometimes get into them."³

More striking than the difference between joint resolutions and bills is often the variation which is to be observed among bills themselves. Some of them are intended to bring about far-reaching changes in

¹ See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 556.

² *Ibid.*, pp. 556-557.

³ *Ibid.*, p. 558.

the program of the government, embody the results of months or even years of investigation, and cover fifty, seventy-five, or even more printed pages. On the other hand, there are bills which

Variation among Bills pertain to utterly unimportant private affairs, intend a minor change in some existing statute, have been drafted in a few minutes, and run only to a few lines in length. In general the latter are known as "private" bills, that is, they do not concern public affairs, while the former are known as "public" bills. But here as in the case of bills and joint resolutions the distinction is not at all followed in practice.

DRAFTING AND INTRODUCTION OF BILLS

There is a widespread belief that proposals to enact laws originate among the Senators and Representatives themselves—as indeed some

Where Bills Originate of them do. However, for every bill which is solely the idea of a member of Congress there are scores which have their inception in the office of the President, in the multiplicity of administrative agencies, in the councils of pressure groups, and in the minds of private citizens. The annual budget, which alone covers several hundred printed pages, is always prepared in the executive office of the President. How many other bills may be drawn up by the immediate advisers and assistants of the chief executive depends upon the energy of the President as well as upon the tenor of the times—we have already pointed out that during the years beginning with 1933 virtually all important legislation was prepared there.¹ The numerous administrative departments never let a year go by without asking Congress to act favorably on all sorts of bills. Some of these embody the most ambitious schemes and call for the appropriation of tens of millions of dollars, while others merely seek minor changes in existing laws which relate to these agencies.² Pressure groups may or may not

¹ See Chap. 16.

² For example, on August 7, 1941, the Securities and Exchange Commission, cooperating with a committee from the financial interests, submitted to the House Foreign and Interstate Commerce Committee a group of proposed amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposals represent the research of both the Commission and the industry and are hence particularly interesting as an attempt of a governmental agency and a pressure group to reconcile their differences. The eighty-six suggestions contain fifty-five which are agreed upon by both parties. The rest are proposals of both groups which they expect the congressional committee to decide upon before it recommends action to the House. On the whole the suggestions, even those to which there is agreement, make financial operations easier and make enforcement of existing regulations more thorough. See the *New York Times*, August 8, 1941.

have elaborate legislative programs of a positive character, but it is a rare pressure group which does not some time or other push a bill which it has prepared. The farm lobby, the industrialists, organized labor, the veterans, the recipients of relief, and the many reform associations all draw up many bills which they hope that Congress will enact as laws. Finally, there are the hosts of individuals who want various personal favors which can be satisfied only by passing a law. Widows of Presidents feel themselves entitled to handsome pensions; the owners of a tungsten mine want the tariff laws modified in such a way as to increase their advantage over foreign producers of that mineral; the parents of a deserter from the Army want the stigma of desertion erased; a victim of a post office truck prays for monetary relief to meet hospital expenses and loss of income.

In general, then, the Senators and Representatives act as intermediaries rather than as originators in the making of laws. They receive proposals from the various agencies of government and private groups which are anxious to secure legislation. After they have sifted the good from the bad, the meritorious bills from the crackpot and harebrained notions, they proceed to guide a varying number of these through the various stages incident to lawmaking. However, it would not be fair to ignore the determined efforts of individual congressmen in the lawmaking field. Although the vast majority of bills originate outside of the houses of Congress and although not a few members of the legislative branch are utterly barren of ideas which would lead to statutes, still there are always a few Senators and Representatives who maintain a deep-seated interest in one or more fields. They do not necessarily seclude themselves from others who may have a similar interest—indeed more often than not they work hand in glove with at least a little group of kindred souls. However, if the original bills are not their brain children they at least contribute in no small measure to the detailed phraseology and consequently leave a distinct impress on them. One may mention Senators Norris, Wagner, and Hatch as current examples of members of Congress who have had more than nominal interest in important legislative measures.

It is one thing to have a general notion of what a bill should include and quite another thing to have a bill which can be introduced into a legislative body. An idea may be expressed verbally or stated in a letter, but Congress will not give its attention

Role of
Senators
and Repre-
sentatives

Formal
Drafting

to proposals in such a form.¹ The general idea and the accompanying details must be organized more or less carefully and the resulting product must then be phrased in the form prescribed for bills. Any student who has had occasion to examine a bill will recall that the form is distinctly different from other English prose, so much so in fact that it is not easy for a layman to read with understanding. First of all, the bill must have a title which gives some hint as to its contents—for example “A bill to further the national defense and security by checking speculative and excessive price rises, price dislocations and inflationary tendencies, and for other purposes.”² Then unless it is to be without legal effect, an enacting clause must be inserted as follows: “Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.” Great care must be taken to state what is intended to be accomplished with clarity and preciseness, and omissions must be skillfully avoided lest a loophole destroy the intended effect.

The body of the bill is organized into titles and sections if it concerns a subject of any particular consequence. The bill, which has been noted above, was divided into three titles and 304 sections. Title I was labeled “General Provisions and Authority” and was subdivided into four sections dealing with “Purposes and Time Limit,” “Prices, Rents, and Market Practices,” “Practices Affecting Prices,” “Agricultural Commodities,” and “Prohibitions.” Title II, “Administration and Enforcement,” was subdivided into sections relating to “Administration: Personnel,” “Obtaining Information,” “Procedure,” “Review,” and “Enforcement.” Title III, “Miscellaneous,” included sections pertaining to “Quarterly Report,” “Definitions,” “Separability,” and “Short Title.” Lest there be a misunderstanding in regard to terms used in the bill, nine definitions of such words as “sale,” “commodity,” “persons,” “ceiling,” and “documents” are specifically written into it. To safeguard against judicial action which might throw out the entire act because certain sections were regarded as objectionable, the following separability clause was inserted: “If any provision of this act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of

¹ Some legislative bodies at times will permit the introduction of a proposal to legislate simply by title, waiting for the body of the bill to be added later, but Congress does not follow this practice.

² This bill was drafted in the executive office of the President and introduced in Congress on August 1, 1941.

the act and the applicability of such provisions to other persons or circumstances shall not be affected thereby." Finally, a short title is given so that the act may be conveniently referred to as the "Emergency Price Control Act of 1941."¹

It should be apparent from the resume of the bill above that drafting requires a specialized knowledge and skill not possessed by the average person. The very form and the technical requirements are such that even one who is competent to write articles, books, and business reports as a professional can scarcely make headway in drafting a bill. Lawyers sometimes take a hand at preparing bills and, of course, have the advantage of being familiar with legal terminology. However, the task of a lawyer is the interpreting of laws rather than their original preparation. Inasmuch as the task of bill drafting is one calling for technical assistance, pressure groups frequently call in experts to advise them while Congress has since 1918 maintained a bill-drafting agency, known as "The Office of Legislative Counsel."² If a Senator or Representative desires to prepare a bill which will accomplish a certain end, he ordinarily furnishes an outline of what he has in mind to the fifteen or so professional bill drafters on the pay roll of Congress and expects the technical work to be done by them. Even in the case of bills which come from outside groups or persons, it is not uncommon for a friendly congressman to use his good offices in having the bill expertly drawn by the technicians who serve on the staff of Congress. If the bill has already been prepared, he may ask the bill-drafting bureau to examine it in order to correct mistakes or point out defects.

No legislative body in the world can begin to equal the record of the Congress of the United States in multiplicity of bills. In many countries only a hundred or two bills will be brought to a national legislature in the course of an entire year.³ Where the cabinet form of representative government or a totalitarian government prevails, bills are almost if not entirely entrusted to the leaders who head the government. Hence there are not the numerous bills relating to the same subject, the pet projects of pressure groups,

Bill-drafting Assistance

Number of Bills

¹ Actually the legislation authorizing price control was not passed until early in 1942, but the original bill bore this title.

² On this office, see F. P. Lee, "The Office of Legislative Counsel," *Columbia Law Review*, Vol. XXIX, pp. 381-403, April, 1929.

³ In England perhaps three hundred bills of general character will be brought to Parliament in a year. Japan rarely exceeds 150 in a single year.

or the crackpot schemes of cranks.¹ But in the United States virtually anyone considers himself quite competent to think up a bill, although he may call for assistance in the formal drafting. Moreover, it is so easy to get a bill introduced that one might almost suppose from the statistics that the framing of bills had become a national pastime. Inasmuch as large numbers of petty bills, calling for pensions, local improvements, and other minor matters, are grouped together into a few omnibus bills, the actual number of bills introduced is even larger than the official figures show. For example, the Sixty-ninth Congress, 1925-1927, which certainly could not be excused on the ground of the extreme urgency of more recent Congresses, combined 5,998 of these minor bills into eight great omnibus bills; yet even so it could point to 23,250 bills and 638 resolutions—a grand total of 29,878 measures in two years. Recent Congresses have ranged from twenty to thirty thousand bills and resolutions, with the latter number more nearly approximated than the former. The cost of printing all of these legislative proposals is by no means insignificant. Moreover, public expense is further augmented by the necessity of maintaining sizable staffs of clerks to keep track of this enormous number of bills and resolutions. Suggestions have been made concerning a reduction, but it is not an easy matter to devise rules which would not have the effect of closing the door to worthy measures while shutting out the flood of inconsequential bills.

Only members of Congress are permitted to introduce bills, but this does not constitute a very serious barrier to those who desire to lay legislative proposals before Congress, for a friendly congressman is almost always available. Congressmen assume no responsibility for the bills that they sign, although they often note that a bill has been introduced "by request," thus indicating that they are in no sense intimately associated with it. A copy of the bill signed by the Senator or Representative introducing it is laid on the desk of either the secretary of the Senate or the clerk of the House of Representatives² as the case may be, and that is all there is to formal introduction. Two thousand or more bills have been introduced under

¹ An interesting article on this subject appeared about ten years ago, but is still worth consulting. See Charles A. Beard, "Squirt-Gun Politics," *Harper's Magazine*, Vol. CLXI, pp. 142-153, July, 1930.

² In the case of the House of Representatives a slot resembling a mail slot is provided. A member with bills to introduce has only to send a clerk or messenger with the bills to this slot.

this simple device during a single day! Tax bills are supposed to be started in the House of Representatives, but other measures may be introduced in either house with equal facility. The larger size of the House of Representatives and the comparative nearness of the Representatives to the "grass roots" does, however, result in the preponderance of bills originating there. As soon as the employees of the House or Senate get around to it, each bill is given a number, showing its general precedence among the measures in that house, but this has little significance except as a means of identifying bills.

THE COMMITTEE STAGE

Shortly after a bill has been introduced in either the House of Representatives or the Senate, it is referred to a standing committee for consideration. In the great majority of cases there is little question as to what committee will receive a bill, for the title of the bill will indicate beyond a doubt what particular standing committee should receive it. Thus a bill to add an additional circuit court of appeals would naturally go to the Committee on Judiciary in either house; a proposal to reorganize the Army would be referred to the Military Affairs committees; while a measure designed to amend the acts relating to the Foreign Service of the United States would go to the Committee on Foreign Relations in the Senate or the Committee on Foreign Affairs in the House of Representatives. Formerly Speakers of the House frequently used their power to refer as a very potent device for controlling the course of legislation. If a certain committee were known to be unfavorable to a bill, the Speaker would see that a bill which he opposed went to that committee, irrespective of whether it was the logical committee to receive the bill or not. Again if the Speaker favored a bill and discovered that the regular standing committee on that field opposed the measure, it was customary for the Speaker to assign the bill to some other favorable committee. Speakers still decide to which committee a bill shall be referred in those exceptional cases in which there is some question as to the province involved, but it is not at present the accepted practice for Speakers to exercise this authority as freely or as selfishly as was the case prior to 1910-1911. A Speaker who referred a bill relating to railroads to the Committee on Banking and Currency because of the known sympathy of that committee for his point of view would, to say the very least, come in for a barrage of criticism. In the Senate the reference to a

Reference
to a
Standing
Committee

committee is even more automatic than in the case of the House, for the presiding officer there never has had the arbitrary power to assign bills to committees.

After the bill has been referred to a standing committee, it is ordered printed, irrespective of whether it has any merit or support. Copies are furnished the members of the committee and to Senators and Representatives and may usually be obtained by interested citizens. Needless to say, the printing of twenty-odd thousand bills every two years is a very costly affair, which has generated considerable criticism. State legislatures frequently order printed only those bills which a committee deems worthy of serious attention or even decides to report favorably. Congress might save many thousands of dollars annually by adopting a similar practice, but there has been little disposition to make the change. Inasmuch as the standing committees dismiss the majority of bills referred to them with little or no attention, the failure to print in these instances would scarcely be any great handicap. Nevertheless, it is argued that members cannot tell what is important and what is lacking in significance without having printed copies. Moreover, it is alleged that some pressure groups oppose a reform of this character because it would make it more difficult to carry on their work of propaganda both among members of Congress and the general public. As it is now, the government prints their bills at public expense, whereas otherwise they might have to bear the cost of printing themselves if they wanted to go far in campaigning for the proposal.

The standing committees may find themselves with hundreds of bills referred or they may have almost nothing to consider. Especially if they do not have too much to do, they are inclined to be quite jealous of their prerogative and may even ask to have a bill reassigned which they feel has been improperly given to another committee. If the committee is a large one which has heavy tasks to perform—the Committee on Appropriations¹ for example—it may find it convenient to subdivide into smaller groups for the actual work of examining what has been assigned to it.² These subcommittees act very much like regular committees, sorting the wheat from the chaff, deciding what changes should be recommended

¹ This committee in the House always has a great deal to do, for the proposals to appropriate money are legion. It usually operates in some fifteen subcommittees.

² Each subcommittee ordinarily has five members.

in a certain bill, and otherwise preparing to dispose of the business entrusted to them. If the committee is not heavily laden, it will act as a whole unless it seems expedient to set up a special subcommittee for a given purpose.

The procedure the committees follow depends quite largely upon their own inclination, for the rules of the Senate and the House of Representatives do not regulate them in any detail. A few of the most important committees schedule regular weekly meetings, but the rank and file assemble at the call of the chairman. Even the less burdened are permitted a modest amount of money for clerical hire, while the ones which handle the bulk of the bills have numerous clerks, stenographers, research assistants, and messengers. Inasmuch as the formal sessions of the Senate and the House of Representatives are held in the afternoon, the committees do most of their work in the morning. It may be added that committees are not ordinarily supposed to meet while their respective houses are in session unless they receive special permission.

After the committees have sorted out the bills which are deemed worthy of consideration, they file away the great majority, or, as it is sometimes expressed, they "pigeonhole" them. In rare cases a bill may be rescued from the oblivion of the pigeon-hole, but from 50 to 75 per cent of the bills introduced in Congress come to final rest in committee files and are never heard of again. At first glance it seems shocking that six or seven bills out of ten never find their way out of the committee stage; certainly it would appear that more bills than that are meritorious. It has been proposed that the committees be compelled to report every bill out, even if their recommendation is distinctly unfavorable. Some of the states expect that much from their legislative committees and it is claimed that abuse is thereby prevented. There is so much difference, however, between the state legislatures and Congress that the argument loses the undoubted force which it has in the state sphere. State legislatures may have a plethora of bills, but there is nothing like the congestion associated with Congress. To require a report on every bill, regardless of its worth, would constitute an additional drain on the time and energies of an already overburdened Congress. That is not to say that every committee takes its responsibility seriously and that every deserving bill gets reported out under the present setup. It is well known that some committees are much more efficient than others and

The
Mortality
Rate

that stubborn committees will at times hold up for months or even indefinitely a bill which has general support. However, those weaknesses do not afford an adequate basis for a drastic rule-revision to require that every bill be reported on within a specified time by the committee to which it was referred.

The bills that pass under the scrutiny of the committees receive varying amounts of attention. The Committee on Ways and Means of the House spent more than three months on a single bill in 1941—the new tax bill.¹ In this instance it may be added that the committee really drafted the bill, for although various proposals relating to the raising of additional revenue had been advanced, no systematic work had been done. On the other hand, a bill which comes from the office of the President, and especially one from a commission which has spent months or even years preparing it, does not require anything like the spadework noted in connection with the tax bill. Detailed investigation has been made before the bill was drafted; hence there is no point in repeating what has already been done. The committee may distrust the conclusions drawn by the experts who have been working on the bill, but it can scarcely disregard the investigations themselves. Therefore the deliberations of the committee will probably be directed at the policy incident to the bill rather than to the details, although amendments may be made even on minor points if the committee decides to accept the general principle.

When extensive consideration is given to a bill, the committee may seek to obtain all the light on the subject which is available. Its staff may search through the committee files and consult the facilities of the Library of Congress. Members of the committee may themselves be sufficiently interested to study the problem and to amass considerable quantities of material relating thereto. Nor is it uncommon to ask for the assistance of specialists in the administrative departments. In drafting a new tax bill the Committee on Ways and Means of the House and the Finance Committee of the Senate almost invariably call in the experts of the Treasury Department to aid them in computing how much a certain tax would yield and to forecast what the general effect of a given tax would be on the economic structure of the country.

¹ See the letter of Chairman Doughton of the Ways and Means Committee in the *New York Times*, August 3, 1941. This letter, which was addressed to the President, throws a good deal of light upon the procedure used by that committee.

All too many bills are reported without adequate investigation of the problems incident to their successful enforcement, but this does not justify a blanket statement that laws are enacted without substantial foundation. Accurate information is not available on every point that arises in connection with a bill. More than that, the committee members have many other functions to attend to in addition to their service on a committee. Under the circumstances it is perhaps not strange that committee consideration is not always all that it might be. The very number of bills which some of the committees struggle with makes careful scrutiny of details almost out of the question.

Adequacy
of Com-
mittee
Information

During recent years it has increasingly been the practice to hold public hearings on bills of great importance around which much public interest centers. The court reorganization bill, the administrative reorganization bill, the neutrality bill, the lease-lend bill, the bill aimed at the reconstruction of the National Labor Relations Board are only a few of those which have been accompanied by public hearings. At any one time it is probable that several committees are holding public hearings on pending legislation—sometimes as many as half a dozen such hearings may be going on during a single morning. On these occasions proponents and critics of proposed legislation will be given an opportunity to present their cases for or against a bill. Not everyone, of course, can air his views, but committees ordinarily examine the applications which are received with reasonable care and extend the courtesy of a hearing to representatives of those interest groups which are especially concerned. Time is allotted to those who are given the privilege of speaking, with the result that carefully prepared statements are frequently presented. For the most part these hearings are held in the committee rooms, but often they are moved to the caucus room or some other more commodious place because of the public interest in them. A visitor will not be impressed by every speaker, for it is too much to expect that ranting and emotional appeals will not be common among personally involved and none too objective witnesses. Nevertheless, many of those who testify are quite familiar with the subject and able to speak with enough authority about the effect of legislation that they contribute appreciably to the understanding of the committee members.

Public
Hearings

By no means all of the members attend these public hearings either because of lack of interest or conflicting engagements, but the com-

mittee representation is for the most part good. In addition, a record is kept so that interested members not present may refer to the transcript. On these occasions a large measure of informality prevails. The rooms are not too large; the committee members and the speaker sit around a large table; a conversational tone is used; and the spectators, who are usually seriously interested rather than merely sight-seeing, crowd near by in the remaining portions of the room. In addition to the prepared statements of witnesses, numerous questions are often put by members of the committee for the purpose of elucidating certain points or eliciting additional information. Both speakers and members usually behave with due decorum and extend the appropriate courtesy to the other. Nevertheless, occasionally a witness or a committee member will allow his emotions to get out of control. In the summer of 1941 one Representative went so far as to "punch a witness's jaw" because he alleged that he had been called "an offensive name." The Representative was apparently so excited himself that he later remarked: "I swung at him. I don't even know whether I hit him or not."¹ During this hearing the committee members were badgering the witness with extraneous questions that implied that the newspaper, *PM*, for which he worked was a "communist paper."²

In addition to the testimony received in connection with public hearings, standing committees frequently are bombarded with various sorts of attention from the outside. The President himself may talk personally or even write letters to ranking members of the committee considering a very important measure. In writing to Chairman Doughton of the Committee of Ways and Means on July 31, 1941, President Roosevelt recalled that Mr. Doughton and Jere Cooper had discussed with him the "problem of the excess profits tax."³ He then proceeded:

There is one other subject which I did not have a chance to talk with you about. It relates to lowering the exemptions in the lower brackets. I know that very few tax experts agree with me but I still think that some way ought to be found by which the exemption of a single person should be reduced to \$750. . . . Further, I am convinced that the overwhelming majority of our citizens want to contribute something directly to our defense

¹ See the *New York Times*, August 2, 1941. Representative Mills of Louisiana and George Reedy were involved.

² *Ibid.*

³ The full text of this most interesting letter together with the reply of Mr. Doughton is to be found in the *New York Times*, August 3, 1941.

and that most of them would rather do it with their eyes open than do it through a general sales tax. . . .

Executives of administrative agencies will ask to be heard in person or submit elaborate statements of their reasons for requesting a favorable action from the committee on a certain bill. Even after the requests of administrative heads for appropriations have been turned down by the Bureau of the Budget, they sometimes literally move heaven and earth to persuade the committees of Congress to accede to their desires.

Admin-
trative
Pressure

Representatives of pressure groups also manage to make their influence felt whether public hearings are held or not.¹ Some of the most powerful are able to get themselves invited to the private hearings of the committee. No one can doubt the influence which agents of the farm lobby have in connection with the deliberations of the Committees on Agriculture of both houses. Bankers may impress the Committees on Banking and Currency; organized labor leaders may have much to do with the decisions of the Committees on Labor, etc. If lobbyists cannot get themselves asked in for counsel, they may be able to interview individual members in their offices or on social occasions. They may compile elaborate reports filled to the brim with factual material and submit them to the committee in charge of a certain bill. Finally, they furnish the names of committee members to local groups and individuals who support the national pressure group, with the urgent plea that letters and telegrams be poured into Washington requesting a specified action by the committee. Naturally, much of the most effective work of pressure agencies is done while bills are in the committee stage.

Pressure
Groups

On the basis of its own investigations, the information submitted at public hearings, the advice of high government officers, and the activities of pressure groups, a committee finally concludes what report to make on a bill. The committee meets for this purpose in an executive session, canvasses the sentiment of the various members, and decides by majority vote what to do. No minutes are kept of these proceedings—as is done in some countries so that the members of the legislative body can inform themselves as to what transpired.² Congressman Robert Luce characterizes these execu-

Committee
Decisions

¹ For a more detailed discussion of the role of pressure groups, see Chap. 11.

² In the Third Republic of France committees of the Chamber of Deputies, for example, kept such records which were deposited in a central office for the examination of any deputy.

tive sessions as "the most interesting, important, and useful part of the work of a congressman, and the part of which the public knows nothing. Indeed, the ignorance of the public about it is one of the causes of its usefulness. Behind closed doors nobody can talk to galleries or the newspaper reporters. Buncombe is not worth while. Only sincerity counts."¹ The committee may decide to report a bill as it is, but this is not the rule. More often it accepts the general outline of a bill, striking out certain provisions and adding new ones; occasionally the committee deletes everything after the title and inserts an entirely new bill. If certain members do not agree with the majority, they may draw up one or more minority reports in which they inform the Senate or the House of Representatives of what they favor.

Every now and then an obstreperous committee will pigeonhole a bill which has generous support among both the congressmen and the people. The problem is then to get the bill out of the committee so that the whole body can vote on it. For many years it has been particularly vital and important to the House of Representatives to find a remedy for this situation. One of the achievements of the "revolution" of 1910-1911 was a rule permitting a majority of the Representatives to force a committee to surrender a bill within fifteen days provided the committee had already had the bill that long a time. This modification proved less useful than its proponents had imagined, for it was almost impossible to secure the support of as many as half of the Representatives for such a purpose. In 1931 attention was given the matter again and the requirement to discharge a committee was made less difficult by substituting one-third for one-half of the Representatives. Thus under the 1931 rule 145, rather than 218, of the members of the House of Representatives could compel a committee to surrender a bill. Even this device proved rather complicated in practice—out of thirty-one attempts to invoke it during 1933-1934 only six resulted in securing the necessary 145 signatures and in only two cases was a bill finally wrested from a committee. Nevertheless, the Democratic leaders feared the new rule and in 1935 restored the old requirement of one-half, or 218 of the members. Consequently at present it is not impossible but certainly very difficult to discharge a committee. Sometimes a bill can be rescued by having it moved from a hostile committee to one which is favorably disposed,

¹ See his *Congress—An Explanation*, Harvard University Press, Cambridge, Mass., 1926. D. 12

but this, too, is not at all easy because it requires a majority vote.¹ In general, if a committee is not willing to give up a bill, it reposes peacefully and indefinitely in the pigeonholes.

THE CAUCUS SYSTEM

There are numerous bills which are of no particular interest to a political party and which, therefore, are permitted to go through the regular channels, with the individual members of Congress taking stands as they please. However, many of the most important legislative proposals do attract party attention, either because they pertain to its platform promises or because they appear to have some bearing on the party's future interests. Then, too, the fact that scarcely any provision is made for leadership in Congress has necessitated an informal arrangement under which some semblance of a legislative program could be drawn up and put through. The mechanism which has been developed to meet the above requirements is known as the "caucus."

A caucus is a meeting of the members of a political party to canvass a situation and to adopt measures which will safeguard the interests of the party. As the term is used in relation to Congress, it refers to huddles of the Democrats or Republicans in the Senate or House of Representatives. The party leaders call the members of their party in the Senate or House together, usually in the caucus room of the office building. All members of the party are expected to attend unless they have a distinctly valid reason for absence—if they neglect these meetings often they are likely to be regarded as not in "good standing" in the party. At these meetings of party representatives in Congress numerous items may be gone over. The party leader, steering committee, floor leader, whips, and party committees on congressional committees are chosen; in other words, a party organization is effected. Then, if the caucus is of the dominant party, it is necessary to plan a positive program for the particular session of Congress. In the case of a minority caucus this phase is less important, although the party is likely to agree to oppose certain controversial bills which are regarded as especially dear to the majority party. In addition to the caucus meeting to adopt the general program at the beginning of a session, other meetings are called from

Nature
of a
Caucus

¹ On the use of this device, see J. P. Chamberlain, *Legislative Processes; National and State*, D. Appleton-Century Company, Inc., New York, 1936, pp. 129ff.

time to time to discuss the party attitude on various important bills.

During caucus meetings the party members in the Senate or House of Representatives are perfectly free to express their opinions and to

Binding Character of Caucus Decisions attempt to persuade the caucus to take their view. However, after the caucus has decided on a stand, all of the members are expected to abide by its decision, even though they may hold very divergent views as to the desirability of a measure.¹

If a congressman has reason to believe that the caucus action will be contrary to his own very strong views, he may not attend the caucus meeting and consequently is not bound by its action, but he can scarcely expect to follow this course at all frequently unless he expects to be ignored by his party, given minor committee assignments, and cut off from future political advancement. Moreover, if a member of Congress has committed himself definitely on a measure to his constituents, he is not expected to reverse himself and follow the caucus. But with these exceptions the decision of the caucus controls the Democratic or Republican legislators. This practice has occasioned severe criticism at times, although it does not at present seem to be in the limelight. Many observers have felt that it is extremely objectionable to compel a congressman to surrender his own opinions and convictions and to accept the contrary views of the caucus. On the other hand, practical considerations demand at least a partial program, else adjournment arrive without anything accomplished. Inasmuch as no machinery is provided in the Constitution for bringing this end about, the caucus system has grown up outside of the legal structure as a sort of "invisible government." It doubtless has its drawbacks, but it performs an essential function, particularly in the House of Representatives.

The caucus system² may seem to encourage back-room tactics—indeed it is frequently referred to as "invisible government" because,

Significance of the Caucus System although not operating in the public eye, it actually determines a large measure of legislative action. Thus, if the majority caucus decides to support a certain bill, the committee to which the bill has been referred is almost bound

¹ The Republicans pride themselves on giving reasonable freedom. The Democrats require a two-thirds vote of a majority of party members to make caucus action binding on all members of the party.

² The term "caucus" has such an unpleasant connotation in the popular mind that the term "conference" has now been substituted in some quarters. The Republicans use the term "party conference" for their caucus.

to act accordingly. There is little or no likelihood that an approved bill will be ignored by the committee or that changes not in keeping with caucus action will be made in its contents. On the other hand, if the majority caucus opposes a bill, a standing committee may refuse to report on the bill at all. Furthermore, it will be virtually impossible to discharge the committee from consideration of the bill because the caucus stand would render it impossible to secure the signatures of 218 Representatives, say, in the House. If a bill is one which is considered important by the majority caucus, almost every obstacle will be removed from its path. Calendars may be terribly crowded and the end of a session near, but the Committee on Rules will bring in a special order of business which will make it possible to consider the measure. If there is any possibility of emasculatory amendments and embarrassing debate, the Committee on Rules at the instigation of the majority caucus may bring in a special rule which will make amendments impossible and literally shut off debate. The floor leader and whips of the majority party will be constantly at work seeing that every step is safely taken, that party members are in their places when a vote is taken, that the opposition party is not given the opportunity to "put something over." Consequently it is impossible to understand the operation of the lawmaking process without taking into account the very important role assumed by the caucus of the majority party. Of course the effectiveness of the minority party will also depend in large measure on the success which its caucus has had in welding the opposition members into a cohesive, hardhitting aggregation.

It should be pointed out at this time that the caucus system is used distinctly more in the House of Representatives than in the Senate. Senatorial caucuses were at one time almost as powerful as those of the House, but for more than a decade now the caucuses in the Senate have limited themselves to setting up party machinery and arranging committee assignments, leaving the Senators free to divide themselves as they like on pending bills.¹ That is not to say that the majority floor leader, the steering committee, and the party whips will not labor energetically to carry a bill which they adjudge to be in the best interests of the party; but no official caucus action is taken which would bind the party Senators in

Role of the
Caucus
in the
Senate

¹ See George Wharton Pepper, *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930, for an illuminating account of the role of the caucus in the Senate.

voting. Considering the irritation manifested by the Senators when any attempt is made to curb their independence, this reduced role of the caucus in the Senate is not particularly strange.

The chief instrument which a party caucus uses in carrying out its functions is the steering committee. This device is particularly associated with the majority party, but both of the parties maintain them—even in the Senate there is a majority and a minority steering committee. Neither the rules of the House of Representatives or Senate nor the laws of the United States recognize these committees. Their exact composition varies from party to party and even within a single party from time to time, depending upon the situation. In general, one may say that the leaders of each party in the Senate or House make up the party steering committee in that house. Membership is formally assigned by the caucus itself, but designation is more or less automatic because of positions of pre-eminence which certain persons have achieved for themselves in party circles. Ordinarily there will be anywhere from a dozen to twenty members of each steering committee. Each has a chairman, chosen by the caucus,¹ who acts as floor leader of his party. This person, if of the majority party, is exceedingly influential in the conduct of House or Senate business—and even the chairmen of the minority steering committees exert not a little power. Whips are attached to the steering committees in order to assist the floor leaders in putting the program through—by seeing that members are at hand for roll calls and votes. The steering committees frequently act for the caucus in matters of detail,² draw up recommendations which the caucus will feel impelled to accept, plan tactics that will be used in connection with a certain bill, and watch the interests of the party on the floor. The majority steering committee in the House confers regularly with the Speaker and the Committee on Rules in regard to order of business, special rules relating to amendments and debate on a controversial bill, and so forth, and has a great deal to say about these matters. Some years ago a member of the House Rules Committee, Representative Pou, made a statement which is probably still accurate:

¹ Senator Barkley, the majority floor leader in the Senate in 1941, was actually chosen by President F. D. Roosevelt. Barkley and Pat Harrison were both candidates, with Harrison apparently in the lead. Mr. Roosevelt wrote a letter supporting Barkley. This caused considerable resentment, but led to the choice of Barkley by a narrow margin.

² For example, in the summer of 1941 the majority steering committee in the Senate filled the committee vacancies occasioned by the death of Senator Harrison and the elevation of Senator Byrnes to the Supreme Court bench.

It cannot be denied that the steering committee is all-powerful. It can and does forbid the consideration of any measure to which a majority of the steering committee is opposed. This may be a surprising statement to some, but the steering committee is more powerful than any of the regular constituted committees of this House. It is more powerful than the Committee on Rules, because the majority of the Committee on Rules will not report any special rule in defiance of the mandate of the steering committee, which is the great super-committee of this House, with power to kill and to make alive.¹

PROCEDURE ON THE FLOOR

When a committee is prepared to report a bill to either the House of Representatives or the Senate, it notifies the clerk of the former or the secretary of the latter of that readiness and returns the bill. The bill is then registered on a calendar which is **Calendars** supposed to assist in determining the order of business. The House of Representatives maintains three of these for different types of measures: (1) the calendar of the whole House on the state of the union, commonly referred to as the "union calendar," for bills appropriating money or dealing with public property; (2) the House calendar, for other public bills; and (3) the committee-of-the-whole House calendar, for special or private bills. Bills are listed on these calendars in the order in which they are received from the committees and remain there until the final adjournment of a Congress,² unless they are removed for consideration.

Despite the apparent ruthlessness of the standing committees in pigeonholing bills, the calendars of both houses are congested. This, of course, means that neither the Senate nor the House of **Congestion of the Calendars** Representatives will have sufficient time to consider nearly all of the bills that are listed. The rules provide that bills shall be taken up in order, but this is observed more by exception than by obedience, especially in the House of Representatives which is more congested than the Senate.³ In order to select those bills which are deemed especially vital from the mass, the majority steering committee and the Speaker of the House or the majority leader in the Senate canvass the situation at regular intervals, causing the Com-

¹ Quoted by F. A. Ogg and P. O. Ray in *Introduction to American Government*, rev. ed., D. Appleton-Century Company, Inc., New York, 1938, p. 352, footnote.

² Bills remain on a calendar not only until the end of a session but until the end of a Congress. Annual sessions are held, but a Congress extends over a period of two years.

³ The Senate does not like to give special precedence to certain bills and follows the regular order much more faithfully than the House.

mittee on Rules to bring in a special order of business scheduling a bill for immediate consideration. The remainder of the bills are allowed to remain on a calendar until finally at the end of a Congress they automatically die through want of action. Many of them are introduced again the next time Congress meets and may have better luck in being chosen for consideration. There is some feeling that the steering committee does not always use the best judgment in designating the bills which are to be given their chance. Certainly there are cases where partisan measures have been given precedence over bills of far greater importance. But under the present system some method must be devised for picking the bills that are to be considered on the floor, for there is no possibility of voting on all of them. The steering committee does not work in the limelight and consequently may act irresponsibly at times, but it does assume a measure of responsibility because the party which it represents will be blamed if legislation on current problems is not forthcoming.

When the time fixed for bringing the favored bill to the floor of the House of Representatives has arrived, the House ordinarily meets as **Committee Reporting** a committee of the whole. Although the Senate prior to 1930 used the committee of the whole even more perhaps than the lower house, it has now abandoned this arrangement for the consideration of ordinary bills and meets in formal session.¹ The committee which has been charged with the bill takes seats around tables which are provided on the floor—if there is a majority and minority report, the majority members occupy seats at one table and the minority use the second table. After the reading clerk has mumbled through the bill so perfunctorily that it is almost impossible to understand his words—this is known as the “second reading” and is the only one where any pretense is made of reading the bill as a whole²—the chairman of the committee arises and explains the committee’s recommendations. A representative of the minority is then given an opportunity to speak for those dissidents who cannot agree with the majority report. As the report is made, members frequently offer amendments which may or may not be acceptable to the committee. If the committee is willing to accept the amendments, the necessary changes are incorporated without a vote, but otherwise the members of the House

¹ The Senate continues to use the committee of the whole in debating treaties.

² The first and third readings are by title only. Under a suspension of the rules, which is not uncommon during the closing days, even the second reading is dispensed with except in so far as the title is given.

must agree by a majority vote that these modifications are desirable. If a special rule shutting off amendments has been adopted, no amendments will be considered at all, unless the committee itself can be persuaded to accept them as part of its report.

Following the report of the committee at least some time is permitted for debating the bill, unless the Committee on Rules has brought in a special order, or "gag rule," which prohibits an ex-
Debate
 pression of opinion from the members. During the period 1933-1936 debate was frequently either dispensed with entirely or so limited that it amounted to little, but ordinarily the House of Representatives is not disposed to pass a bill without reasonable opportunity to debate it. The attitude of the Senate is even more pronounced and if any Senator persists in his demand to prolong debate a vote will usually not be taken. Inasmuch as the House of Representatives carries on most of its debate as a committee of the whole, members speak under a rule which limits them to five minutes, unless they secure unanimous consent to an extension of time.¹ This means that debate in the lower house is pointed, spirited, and limited to a reasonably short aggregate period, during which numerous Representatives participate.

There are few points on which the Senators are as sensitive as on freedom of debate. Although they may be bored to death by the interminable speeches of colleagues, they are loathe to
Debate
in the
Senate
 consider any rule which would bring debate within reasonable limits. Almost from the beginning the Senate has operated without a rule which permits a motion calling for the "previous question."² Senators are not supposed to speak more than twice on the same bill during a single day, but this constitutes no very serious limitation. At times there will be enough sentiment to invoke a "unanimous-consent" rule which has the effect of bringing debate to an end. A cumbersome closure rule, adopted during the days of World War I, is theoretically of some value, but it is finally resorted to with such senatorial reluctance that it is actually of slight significance

¹ Extensions of time for five minutes are not exceptional, but they are not requested by most speakers.

² A motion for the "previous question" is a call that the question under discussion be voted upon immediately. It cannot be argued, but must be voted upon at once. If it is accepted the bill under consideration must then be put to an immediate vote also. While the Senate abandoned the procedure in 1806, it is still in common use in the House of Representatives.

except in the most extreme cases. Under this 1917 rule one-sixth of the Senators must sign a petition to invoke closure; then on the second calendar day a roll-call vote is taken on the question which must show two-thirds of the Senators in favor of ending debate; even then each Senator must be permitted one hour for debating the measure, which if all Senators availed themselves of the privilege would require at least sixteen ordinary days.¹

Occasionally a single Senator or a small group of Senators will be so opposed to a pending measure or so anxious to obtain a concession that **Filibuster-** they will stage what is known as a "filibuster." Securing **ing** the floor of the Senate they will go on for hours talking about trivialities and even consuming the valuable time by bringing up entirely extraneous matter. The Senate rules provide that "No one is to speak impertinently, or beside the question," but this has not prevented daring Senators from reading the Bible, refreshing the memories of their few hearers with the dictionary, or otherwise preventing action on a measure which they oppose or wish to hold up until their terms have been met. Prior to 1933 filibusters were especially common during the closing days of a short session which necessarily had to come to an end by March fourth. It was rather generally believed that the Twentieth Amendment might serve among other things to make filibusters less common, but it has apparently not had that effect.² Huey Long broke all records except one in filibustering against N.I.R.A. in the first Congress after the Lame Duck Amendment went into effect. In 1938 the southern Democrats carried on a successful filibuster against the Anti-Lynching Bill, while in 1941 Senator Wheeler used what amounted to such tactics during the debate on the Lease-Lend Bill, although he finally permitted a vote to be taken after days of delay. Foreign observers cannot understand why the United States puts up with dilatory tricks, when the majority clearly wants to take action and particularly when the welfare of the country is being jeopardized. Perhaps if the filibuster were to be carried to extreme lengths some safeguard more effective than the closure rule of 1917 would be set up. As it is, filibusters are not commonplace—at least in an extreme form—and the Senators prefer to

¹ Of course, by no means all of the Senators, perhaps no large number, would avail themselves of the time permitted.

² For a recent study of filibustering, see F. L. Burdette, *Filibustering in the Senate*, Princeton University Press, Princeton, N. J., 1939.

maintain their freedom of debate intact rather than to rid themselves of what after all is a colorful if an unbusinesslike practice.¹

All bills must be given three readings in both the House of Representatives and the Senate. The first takes place when the bill is referred to a committee; the second at the time of the committee report; and a third one before the bill finally passes. Amend-
Third Reading
ments and debate ordinarily are associated with the second stage, but they may also accompany the third reading, especially in the Senate. After successfully passing the second reading, a bill is engrossed—or formally copied by the engrossing clerks—and placed back upon a calendar. When the regular order of business brings the bill up for final passage or when a special order has rescued it from the oblivion of a crowded calendar during the final days of a session, the third reading is given. If the vote is favorable the bill is ready to go to the other house or, if the other house has already accepted it in identical form, to the President.

There are four methods of voting used in the two houses of Congress. The most prevalent is the familiar viva voce, or voice vote. If there is a fairly even split and it is difficult to ascertain how the
Voting
voice vote has gone, a rising vote may be ordered. A third method, which may be demanded by one-fifth of a quorum, requires that congressmen who favor a measure file past tellers to be counted and those who are opposed do likewise. Finally, there is the formal roll-call vote which is used in the final passage of virtually all important bills. The clerk calls the roll of the members alphabetically and each one answers "yea" or "nay" to be permanently recorded in the journal. One-fifth of the members may request a roll-call vote even during an early stage of a bill, but in practice this is largely restricted to the third reading. A single roll-call in the House of Representatives consumes something like thirty-five minutes which, considering the generous use made of this method of voting, presents a serious problem.

¹ Professor Rogers, however, points out that: "It is a remarkable fact that every proposal defeated by a filibuster has been unregretted by the country and rarely readvocated by its supporters." But he adds, "Such minority omniscience . . . must be more accidental than wise, and the danger is always present . . . that the interests of the country will be adversely affected." See his *The American Senate*, Alfred A. Knopf, New York, 1926, pp. 168-169. On this same point Professor Corwin says, "Nor, unfortunately is the question simply whether the filibuster has killed good measures, but also whether it had led to the enactment of bad ones. The indefensible concessions which a small bloc of so-called 'Silver Senators' have been able to wrest from Congress from time to time during the past sixty years is conclusive testimony on that point." See his *The President: Office and Powers*, New York University Press, New York, 1940, p. 291.

During a single year the lower house may have the roll called more than two hundred times ¹ which is the equivalent of at least a month of sessions. Considering the popularity which gadgets enjoy in the United States, it would seem that the House of Representatives particularly might install one of the electrical voting systems which several state legislatures and even a few foreign legislatures now employ. These are reasonably foolproof and cut the roll call to a mere fraction of the time now required. Moreover, they are so efficient that they afford a means of requesting the floor, summoning a page, answering present to roll calls to ascertain a quorum, and so forth. But Congress seems satisfied to get along with its present facilities, despite the fact that many bills cannot be given a hearing for lack of time.

When congressmen are absent from Washington or ill, they sometimes arrange to have their votes "paired" with those of absent colleagues who stand on the other side of a question. In this way they do not lose their voice entirely, despite their absence from the chamber. In contrast to these members who want their votes counted, there is always a fairly large number who are very reluctant to have their votes recorded at all. Party pressure may compel them to vote finally, but it is not uncommon to find them slipping away before a vote is taken or even refusing to answer when their names are called.

We have already noted that pressure groups are active in cultivating members of standing committees. It must be apparent that they do not content themselves with that activity, for although **The Lobby** important in themselves committees do not have the final word. More than that, even after a committee has refused to go as far as a lobbyist desires, he may save the day by appealing to the Senators or Representatives to amend from the floor. The techniques which are employed in this connection have been dealt with in an earlier chapter;² it remains here only to call attention again to the important role which the pressure groups frequently have in determining the outcome of a vote.

It is, of course, not enough that the Senate and the House of Representatives agree on the principle of a bill; they must see eye to eye on **Conference Committees** every jot and tittle, no matter how unimportant the detail might seem. Occasionally both houses will pass an important bill in identical form. But more often than not there will be some

¹ This includes roll calls to ascertain quorums as well as formal voting.

² See Chap. II.

aspects of a House bill which the Senators do not like and vice versa. This means that the bill as changed must go back to the house in which it originated for approval of amendments. If the changes are of minor import, the original house may agree to them without a great deal of question; but if they are significant, as is often the case, then there may be distinct reluctance to accept them. If it appears that the two houses cannot arrive at an agreement by ordinary means, it is the custom to set up special conference committees to work out a compromise. After the request of one of the houses for a conference has been accepted by the other, the presiding officers each designate three or, in exceptional cases, even five or more managers to serve on a conference committee. These conferees may be given instructions by their respective houses,¹ although there is disposition to allow them a free hand. They meet behind closed doors and sometimes for days and even weeks explore the various avenues of compromise. If they fail to agree, they ask to be discharged by their houses; otherwise they present a report which must be accepted or rejected as a whole. Usually the exigencies of the situation are such that the two houses will reluctantly approve the compromise, despite a noticeable lack of enthusiasm. The House has at times been especially loathe to accept unpalatable compromises because of the oft-asserted greater skill of the senatorial conferees in getting their way. Conference committees are currently used in a tenth or more of all the bills and resolutions adopted by Congress and are a feature of virtually all important pieces of legislation.² They have been criticized because of their secret negotiations, the advantage they have in the rule that their recommendations be accepted or rejected in whole, and the supposed influence which pressure groups have on their decisions. Nevertheless, it would be exceedingly difficult to get along without them unless Congress were willing to set up a system of joint committees, such as Massachusetts has had in her state legislature for a number of years.³ Joint com-

¹ The lower house is more inclined to give instructions than the Senate since it feels that its managers are too easily out-talked by the more experienced Senators.

² To illustrate the power which conference committees have and to give an example of what is sometimes their procedure, the defense highway bill of 1941 affords an excellent and not isolated case. On June 16 the Senate passed the bill with provisions totaling \$250,000,000. The House on July 21 increased the appropriation to \$287,000,000. When the bill reached the conference committee's hands it was raised to \$320,000,000. President Roosevelt vetoed the bill indicating that he thought it had been made a pork-barrel affair. See *New York Times*, August 5, 1941.

³ For a discussion of joint committees, see Chap. 40.

mittees would seem to offer a good many advantages if Congress could be persuaded to adopt them.

It has already been pointed out that the engrossed copies of bills duly signed by the presiding officers of the two houses are sent to the office of the President very soon after they have passed both houses. There is little purpose in repeating what has already been dealt with in connection with the powers and duties of the chief executive, but it is well to refresh one's memory on this stage.¹ If the President vetoes the bill, it, of course, must return to Congress and receive the support of two-thirds of both houses before it can become law. If the bill is not vetoed by the President or if it is passed over a presidential veto by Congress, it goes at once to the Department of State. If the bill itself has specified when it shall take effect, that date controls; however, in most instances no date is mentioned and hence it waits the official promulgation of the Secretary of State. All of the bills and resolutions from a session are held until Congress has adjourned; then they are published in a series of volumes known as *Statutes at Large of the United States*.² As soon as the publication has been completed, the Secretary of State officially declares them to be in effect.

Several publications of Congress are valuable sources of information in connection with the process of lawmaking. The *Congressional Record* is published every day during sessions of Congress and often for several weeks after adjournment. It does not, however, contain the texts of bills, the detailed reports of committees, or the proceedings of the Senate during executive session. Moreover, members of Congress are permitted to revise statements which they have made on the floor before publication or the houses themselves may order remarks stricken from the record. Undelivered speeches of Representatives are inserted in the *Record* under "leave to print," even to the spurious (Applause) and (Extended applause) parentheses.³ Nevertheless, the *Record* affords reasonable

Steps after
a Bill
Leaves
Congress

Congressional
Publications

¹ See Chap. 16.

² Before the large volumes appear, individual acts may be printed as "slip-laws." Two volumes of the statutes are prepared: one containing public acts and resolutions; a second private acts, concurrent resolutions, treaties, and presidential proclamations.

³ Newspaper and magazine articles, even entire books, may be printed in the *Record* under unanimous consent privilege. Copies of the *Record* in which some congressman's undelivered speech appears are then franked and sent out to his constituents. There has been from time to time considerable criticism of this abuse, but no suggestions for reform have been very cordially received by Congress. In 1937 there was a proposal from the

assistance to a serious student of the legislative process. If the *Record*, with its twenty to thirty thousand double-columned pages each two years, may be regarded as so voluminous that it is padded, the *Journals* published by the two houses are so abbreviated that they seem skeletal in form. The *Journals* are worth consulting for formal action, but they contain so little meat on their bones that they give only a fragmentary notion of what has transpired. The *Congressional Directory* is a convenient annual handbook which includes much pertinent information regarding committees, committee members, biographical records of Senators and Representatives, and so forth. Committee reports are unfortunately not so easily obtainable as the above publications, but they are frequently more important as sources of information than the *Record*. They are usually published as *House* or *Senate Documents*, and may be obtained under that guise, although some of them are brought out in only paper covers and after a few years are almost unobtainable.¹

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floor of the House of Representatives to restrict the *Record* to genuine debate, which if accepted would have saved \$173,000 a year. Of course, the proposal failed.

¹ Some reports of committees cannot be found even in the libraries of large cities or great universities.

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CHAPTER XXI

THE LOWER FEDERAL COURTS

THERE are in the United States two separate systems of courts which to some extent at least parallel each other: the federal courts and the state courts. The student may wonder why it is necessary to have two separate systems rather than a single unified hierarchy. Wouldn't substantial sums of money be saved by substituting a single judicial organization for the present complicated setup? Would not a unified system be more efficient, reduce delays, and outlaw political practices sometimes associated with courts? The reply to these queries must take into account the federal plan of government under which we operate. Everything else being equal, it would, of course, be preferable to have one hierarchy of courts rather than a separate federal judiciary and forty-eight state systems. Certainly there would be greater uniformity than we now have; the time required to take cases through several courts of a state and then to the federal Supreme Court might be cut; and it is possible that economies might make it possible to save some money. But the men of 1787 were convinced that two separate court structures are essential because all these factors above are secondary to the basic consideration: the particular kind of government which we have.

**Basis of a
Separate
Federal
Court
System**

Under a unitary form of government there would be no justification for two separate judicial organizations; indeed all of the countries of unitary governmental form maintain national systems of courts. However, under the federal plan of government either separate judicial hierarchies must be established or it must be decided which of the governments is to have the courts. If a national court structure were adopted, the states, although they are the bases of the federal form, would be ignored. No sane person would have supposed that state tribunals could have been abolished by the framers of the Constitution. Indeed local pride was so great that there was some feeling that all courts should be confined to the state category—at least except for a single federal Supreme Court. On the other hand, if the central government had to depend entirely upon state governments to enforce its

laws, there would be friction and even weakness. The delegates, remembering the experience under the Articles of Confederation, recognized that danger and wisely decided to authorize the establishment of a complete system of federal courts alongside the state courts. Hence we have a United States Supreme Court and forty-eight state supreme courts; federal circuit courts of appeals and state circuit and appellate courts; federal district courts and state district tribunals. It may be difficult for a foreign student to keep the complicated structure in mind, but it harmonizes with our political institutions and in general has proved reasonably satisfactory.

The third article of the Constitution is usually known as the "judiciary article" because it is devoted to the federal courts. It provides

**Article III
of the
Constitution** in some detail for the jurisdiction of the federal tribunals since the framers realized that there would be serious conflict unless the boundaries between the work of the state and federal courts were made quite clear. However, comparatively little attention is given to the structure of the system. Congress is commanded to set up a Supreme Court, although nothing is specified as to its size or organization. Inferior federal courts are also mentioned, but their number, type, organization, exact jurisdiction, and composition is left to the judgment of Congress.

JURISDICTION OF THE FEDERAL JUDICIARY

Inasmuch as there had been no national courts under the government set up by the Articles of Confederation, the framers had to blaze a trail in outlining the jurisdiction which the federal courts should have. The disputes that had arisen under the confederation gave them some guidance; moreover, there were certain fields that were clearly national rather than local in character. On the other hand, other types of cases belonged to a border land shared by the two governments. Since the Constitution attempted a specific enumeration of the powers of the central government, it was necessary to take great pains in listing the cases that might be brought to federal courts in order that only stipulated cases could be assumed by these tribunals. Two broad categories of cases were finally brought under federal jurisdiction: (1) those which involved certain subject matter, and (2) those which involved specified parties.

One of the arguments in favor of a separate and complete system of federal courts emphasized the lack of uniformity that would attend interpretations of federal laws, treaties, and the Constitution itself if this function were entrusted to the state courts. Subject
Matter

Therefore, when it was decided to provide for a separate hierarchy of federal courts, it was only natural that the framers should specify certain fields based on subject matter that belonged under the jurisdiction of those courts. Anyone will appreciate the importance of having federal laws applied and interpreted by federal courts. The judges of state courts must, of course, take oaths that they will uphold the Constitution and laws of the United States, but even so they are state officials, deriving their authority and salary from state sources. When a federal statute would work to the disadvantage of a state, these local judges might find it difficult to give impartial consideration. Having federal courts, it would be absurd not to give them jurisdiction over laws enacted by Congress. Treaties also are the expression of the will of the national government. While some treaties are not likely to require interpretation and enforcement by the courts of law, it is not uncommon to encounter those that do. Needless to say, the federal courts are the logical agencies to assume this responsibility. Courts of any grade, state or national, may interpret the federal Constitution, but there must be some method of checking those inferior courts that produce weird interpretations so that eventually there will be a single authoritative statement of what a clause of the Constitution means. It is obvious that only the federal Supreme Court can act in this capacity.

Finally, there are admiralty and maritime cases which arise on the high seas or on the navigable waters of the United States. The states may have an interest in these controversies, but their very nature renders them especially fitting for the consideration of federal tribunals. A vessel whose home port is nominally Houston may be engaged for the time being in transporting a cargo of merchandise from Baltimore to Los Angeles. Disputes about the freight carried, the supplies purchased, insurance on the vessel and cargo, collisions with other vessels, the food and wages of the sailors, the flaunting of the captain's authority, and numerous other matters may involve several states or their citizens; moreover the attempted mutiny of a crew or the damage done to a cargo may occur on the high seas far beyond the waters of a state. Federal courts are more likely to be impartial than state tribunals in these cases of conflicting jurisdiction.

In addition to cases which come to the federal courts because of the subjects they concern there are other cases that are placed under federal jurisdiction because of the parties involved. **Nature of Parties** Ambassadors, ministers, and consuls of foreign countries are attached to the national government and therefore, even in the absence of international law which ordinarily renders them immune from any liability, they are appropriately placed under the jurisdiction of federal rather than of state courts. Again it would be beneath the dignity of the United States to be brought into a state court—consequently controversies to which it is a party are brought to federal courts. When private citizens of one state are engaged in litigation with private citizens of another state, there is always a problem of impartial state courts, for there is a not unnatural disposition on their part to favor their own citizens. In important cases of this character it is logical that the assistance of the federal courts should be available if not obligatory. Citizens of the same state who are in legal dispute because of land which they claim under grants from different states also find it difficult to obtain satisfaction from state courts. There are comparatively few such cases now, but they may be brought to federal tribunals. Finally, there are the controversies to which a state is a party. The original Constitution was interpreted by the Supreme Court to mean that even cases brought by private citizens of a state against another state¹ could be handled by federal courts, but the Eleventh Amendment was quickly added to change that provision which the states looked upon as an insult to their sovereignty. At present, therefore, only those cases in which a state is suing or being sued by another state or by the Federal government come under this provision.

It is not to be supposed that the cases placed under federal jurisdiction by the Constitution must invariably be brought to those courts.

Exclusive and Concurrent Jurisdiction There are, indeed, certain cases in which the federal tribunals do exercise exclusive jurisdiction, but they are not so numerous as those of concurrent authority. The United States does not permit itself to be sued except in its own courts; nor do states sue other states except in the Supreme Court of the United States itself. Suits against ambassadors, ministers, and consuls also are exclusively under jurisdiction of federal courts. Crimes committed against a federal statute, along with patent, bankruptcy, admiralty, and maritime cases are virtually if not entirely under the

¹ See *Chisholm v. Georgia*, 2 Dallas 419 (1793).

exclusive jurisdiction of the federal tribunals. However, when a clause of the federal Constitution or a treaty is in dispute, state courts may rule, although the federal courts have final determination. The most common kind of controversy is a suit of a citizen of one state against a citizen of another state. None of these may be carried to a federal court unless at least \$3000 is involved. Even in amounts exceeding that figure there is concurrent jurisdiction permitting the litigants to decide where they want their cases to be heard.

Cases may be brought to a federal court in three different ways: (1) they may be started there to begin with, (2) they may be removed from a state court, and (3) they may be appealed from a state court. The majority of federal court cases come under the first category. Indeed in the federal district courts which handle the vast majority, there are only the first two possibilities, for these courts have no appellate jurisdiction. It is not uncommon to have a defendant in a case of diverse citizenship ask to have a case removed to a federal court, because he is not satisfied that the state court of the plaintiff will give a fair trial, but most of the cases found on the docket of a federal district court were brought there without recourse to any other court. When cases are removed from a state court, that step must be taken before the decision and ordinarily will occur early in the proceedings. Appeals, as noted below, may be taken under certain circumstances from state tribunals, although never from a lower state court to a lower federal court. Only after a state supreme court has decided a point relating to the federal Constitution, a federal law, or a treaty in a manner which is questionable or has denied a right claimed under the federal Constitution can an appeal be lodged with the Supreme Court of the United States.

Original,
Removal,
and
Appellate
Jurisdiction

THE ACTUAL WORK OF FEDERAL COURTS

The federal courts are heavily burdened with cases of one kind and another. Prior to the efforts of Chief Justice Taft directed at reducing delay, many federal courts were several years behind with their work, which entailed a considerable hardship to those persons and corporations that lost money every day a controversy remained unsettled. There has recently been a slight expansion in the court structure ¹ and a considerable addition to the number of district judges.² In 1941 pro-

¹ An additional circuit court of appeals has been added, for example.

² A smaller number of circuit court of appeals judges has also been added.

vision was made for three law clerks in each circuit to assist district judges upon assignment by the senior circuit judge. This, together with the revision of rules and the supervision of the judicial council,¹ has effected a speeding up of justice. The repeal of the Eighteenth Amendment and its accompanying laws is supposed by some persons to have relieved the federal judiciary of a large part of its burden, but in reality dockets are heavier than ever. Even cases involving liquor are still commonplace, although they deal with "moonshiners" who distill without paying the federal tax, with the sale of untaxed liquor, and with various revenue requirements. The greater part of the cases brought to the federal courts for decision for many years had to do with private matters, but in 1941 government cases totaled 14,547 while private cases numbered 14,362.² With the expansion of government agencies and the necessity of condemning property for national defense purposes, this change is not surprising.

Despite the emphasis placed by judges, the President, and many laymen on speeding up the administration of justice, inadequate attention has been given to the prompt filling of vacancies on the bench. Reforms in procedure will go far in reducing delay, but if there are no judges to hear cases even the most streamlined procedure will not achieve substantial results.

The Problem of Vacancies on the Bench At the end of the fiscal year of 1941 there were nine vacancies among the district courts and one vacancy on the benches of the circuit courts of appeals—one district judgeship in Connecticut having been unfilled since April, 1939, or more than two years.³ The director of the Administrative Office of the United States Courts succinctly states in his annual report for the above year that "the District Courts have been hampered" by these vacancies. It is, of course, essential that undue haste be avoided, for it is difficult enough with reasonable care to secure superior federal judges. Nevertheless, it hardly seems necessary to permit as many places to remain vacant and for so long a time as the record shows has been the case. There is substantial ground for belief that many of the vacancies are accounted for by the practice of permitting these appointments to be made on a patronage basis. The Senators and Representatives who claim the right to dictate the

¹ For a detailed treatment of the judicial council, see pp. 460-461.

² See the *Second Annual Report of the Director of the Administrative Office of the United States Courts* (1941).

³ See the *Second Annual Report of the Director of the Administrative Office of the United States Courts*, Washington, 1941.

choice have their own protégés and find it difficult to get together on an acceptable nomination.

CIVIL CASES

The civil cases which are entered on the dockets of federal courts are of three general varieties: (1) cases in law, (2) cases in equity, and (3) admiralty cases.

When persons or corporations of diverse citizenship resort to the federal courts, they usually have cases under the first category noted above. At least \$3,000 must be at stake and much larger sums are ordinarily involved—even hundreds of thousands or millions of dollars. Civil wrongs, designated “torts,” may provoke the dispute; contracts entered into expressly or made by implication may be the basis. In the latter event there may be a question as to whether a contract actually exists, while if a formal contract is in litigation there may be a difference of opinion as to certain provisions, the degree of liability for infringement, or the terms of abrogation. These cases all seek monetary damages and are based to a considerable extent upon the common law.

Types of
Civil Cases

Cases in
Law

In so far as Congress has passed statutes relating to cases at law, the federal courts are, of course, bound by those statutes. However, in large numbers of these disputes there is no federal statutory law on the subject and consequently common law must be applied. Common law is one of the significant contributions of England to the modern world. It has been developing there for at least a thousand years and has been so highly regarded that it has been adopted as a legal basis by many other countries. The colonists brought the English common law with them to the New World and it became the basic civil law in all the states but Louisiana, which because of its French antecedents chose the *Code Napoléon*.¹ Inasmuch as local conditions have varied from state to state and the common law is developing rather than static, there are at present forty-seven common laws rather than a single system. That is not to say that there are great basic differences from one state to another, but the details have been influenced by local problems and psychology enough to cause a good deal of variation. This presents difficulties to the federal courts which must decide cases where the common law is the only guide. The rule has long been that a court would apply the common

Common
Law

¹ Even in Louisiana the common law has influenced the legal system.

law of the state in which it operated, but diverse citizenship has made that difficult at times because there would be two common laws involved. For some years the federal district courts used the accepted common law where there was no conflict between the common law of the two states of the parties to the case. Where there was a contradiction, they used their judgment in working out a compromise. The decisions in these cases were gradually building up a forty-eighth common law which some predicted might eventually become a system of federal common law. In the 1930's the Supreme Court of the United States put an end to this process when it held that a federal district court must apply the common law of the state in which the act complained of took place. Hence a suit by the father of a boy who was run over by a freight engine of a Pennsylvania corporation in Ohio would involve only the common law of Ohio.¹

Although the common law furnishes an adequate remedy in cases where monetary damages suffice, there are others in which the common law is far from satisfactory. Suppose the destruction of valuable property, not easily replaced, is threatened by neighbors. Even if monetary damages could be expected, they might not compensate for the loss. The English early recognized the injustice which the application of the ordinary common law worked in exceptional cases and made provision accordingly.

In those cases in which common law could not be applied without injustice, it became the practice in England for those affected adversely to ask the king for assistance. Kings, not caring to be bothered personally with such petitions, charged their chancellors with receiving and deciding the pleas. Inasmuch as there was an increasingly large number of these cases, the ministers of the king drew up rules which might be uniformly applied. From this early beginning there developed over several centuries an elaborate body of rules known as "equity." Interestingly enough, equity is

¹ Although federal common law as a system superseding state common law has been denied, the Supreme Court has built up a series of precedents in interstate common law which are still active. In *Kansas v. Colorado*, 206 U. S. 46 (1907), the court said: "Yet, whenever . . . the action of one State reaches through the agency of natural laws into the territory of another State, the question of the extent and limitations of the rights of the two States becomes a matter of justifiable dispute between them, and this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them. In other words, through these successive disputes and decisions this court is practically building up what may not improperly be called interstate common law."

strikingly different from common law, despite the fact that both developed side by side in the same environment. Common law has been likened to an old dog which has lost most of its vigor as well as its teeth and if it perchance bites will not inflict much damage. Equity is, on the other hand, more drastic in its effect, more expeditious in its procedure, and more intolerant of dilatory tactics. If, after surmounting all of the legal obstacles permitted under common-law procedure, a litigant manages to get a court judgment against one who has violated a contract, he may have won exactly nothing unless it be a moral victory. A judgment which calls for the payment of a certain sum of money avails little or nothing unless it can be enforced and in tens of thousands of cases it never is enforced because the defendant appears to have no property with which to satisfy the judgment. A decree in equity, however, is not to be trifled with, for neglect of it may easily send one to jail for contempt of court.

Equity embodies the concepts of the famous Roman law, the *corpus iuris*, rather than the prevailing Anglo-Saxon philosophy. It grew up alongside of common law in so different a mold largely because it was formulated by the clerically trained ministers of the king who knew the canon or church law which was based on the Roman law. In equity cases courts proceed by issuing writs, such as those of specific performance and injunction, the first of which orders a positive action while the latter prohibits a certain action. Although originally in England separate courts administered equity rules, both common law and equity are now applied by the same federal courts in the United States. Lawyers decide under which law they wish to bring their cases and enter them accordingly on the appropriate docket. It may be added that federal courts have been charged with the abuse of the writ of injunction in labor strikes and recently have been limited by law in their issuance of that writ in these cases.¹ Equity makes little or no use of juries, depends more upon written arguments and evidence than upon public sessions, and is preventive in its aim rather than punitive.

The third type of civil case over which federal courts take jurisdiction is far less commonplace than the other two. Federal district courts located in the hinterland of the United States are **Admiralty Cases** seldom called upon to decide cases in which two ships have collided, a shipper maintains that freight has been ruined, or a master and a crew find it impossible to agree. However, in the district courts

¹ The Norris-LaGuardia Act.

located in important shipping centers, such as New York, Boston, New Orleans, Los Angeles, San Francisco, Houston, and Seattle, these cases are constantly arising. Special admiralty and maritime rules have grown up over a period of more than two thousand years. They may be modified by Congress or interpreted by the courts, but they are more international than national in character.

One special category of civil cases deserves special mention because it occupies so much of the time and energy of federal district courts.

Bankruptcy Cases Congress has enacted elaborate laws relating to bankruptcy and has charged the federal district courts with administering them. Therefore, when an individual or corporation, either on its own initiative or upon the petition of creditors, is thrown into bankruptcy, a federal district court not only must authorize the bankruptcy to begin with, but also must supervise the subsequent steps. In individual cases it is common to liquidate the assets and pay off the creditors, in so far as the assets will permit, under the eye of the court. However, great corporations, particularly railroads and holding companies, often cannot be dealt with so simply. The federal district court appoints receivers who take over the property and attempt to manage it efficiently enough to restore a condition of solvency. This involves operation of thousands of miles of railroads for years at a time, reorganization of the corporate structure, capital expenditures for improvements, and other complicated tasks. Of course, the courts do not do the actual work themselves, but they are obliged to oversee the management of the receivers as well as to approve important changes which the latter propose to make in the hope of putting the business back on its feet.

CRIMINAL CASES

Most of the criminal field is occupied by the states; hence homicides, burglaries, and other serious offenses ordinarily are tried by state courts. However, Congress has the authority to enact statutes which deal with the protection of federal property, including the mails, interstate acts of a criminal nature, the safeguarding of the currency and banking systems, treason, offenses against international law, and offenses committed on the high seas, in the District of Columbia, on federal property, or in a territory. Some of these categories, treason for example, involve few offenses and hence do not bring many cases each year.

Types of Criminal Cases under Federal Jurisdiction

The transportation across state lines of stolen automobiles, women for immoral purposes, loot obtained from a bank, and kidnapped persons now carry heavy federal penalties. Counterfeiting of metal or paper money is also one of the more serious offenses against the Federal government. The robbing of national or Federal reserve banks either by employees or outside criminals is a federal offense. Smugglers, bootleggers of untaxed liquor, dope peddlers, violators of the pure food laws, and related offenders account for many of the cases which fill the dockets of federal courts.

Finally, there are the many cases involving misuse of the mails. There are always abnormal persons who attempt to use the mails for circulating obscene literature or pornographic pictures. Others seek to obtain money under false pretenses by sending out alluring promises of inordinate returns on the investment of a few dollars. Many of these consciously organize a racket which they know will separate suckers from their money, while promoters of one kind and another skate nearer and nearer to thin ice until they finally are arrested by the federal authorities for using the mails to defraud. For years a racket which brought repeated offenders to the federal district court of one state sent out what purported to be lists of women and men desiring to contract marriage. Alluring statements were made in regard to the estates of these lonely souls; these were followed by personal letters and photographs. Unfortunately for the suckers, it always developed that the estates were being liquidated by the courts and hence some ready cash was needed to pay the living expenses, travel costs, and hospitalization of the spurious bride or groom. Apparently large numbers of people were separated from their money in this racket, judging from the enthusiasm which its organizers displayed for resuming business immediately after release from prison.

The court procedure in criminal cases is regulated both by provisions of the Constitution ¹ and by rules which Congress has from time to time enacted either on its own initiative or upon recom- **Criminal Procedure**
mendation of the federal courts. Both a grand jury indictment and jury trial must be accorded in serious cases, although the majority of accused persons now waive the jury trial in favor of a trial by the presiding judge. Counsel must be furnished to those who are unable to hire their own; opportunity must be given to consult counsel; public assistance must be forthcoming for the summoning of

¹ For a more detailed discussion of these, see Chap. 6.

witnesses. The accused must be confronted by the witnesses against him, cannot be compelled to take the witness stand, and must be given a speedy and fair trial. Reasonable bail must be permitted except in the most serious crimes, while cruel and unusual punishment is banned. In general, it may be said that federal courts protect the rights of the accused and do not permit the extreme behavior sometimes encountered in state courts. Lawyers are expected to display reasonable decorum and to proceed with the defense of their client without abusing the technical rights. The federal record of convictions is distinctly better than that of many state courts.

FEDERAL DISTRICT COURTS

Continental United States is divided into eighty-four districts¹ which serve as bases for the organization of the federal district courts.

Organiza- Every state has at least a single district; the more populous
-tion states include two or three or in a few cases even more districts. Ordinarily state lines are observed in setting up the areas of district courts' jurisdiction, but there are some exceptions which combine parts of two states into a single district. These courts have single-judge benches except when injunctions are sought to prevent the enforcement of federal or state laws alleged to be unconstitutional.² In those districts in which large cities are situated the amount of work which comes to these courts is large and it is consequently necessary to assign more than one judge and to have several sessions of the court going on simultaneously. In the southern district court of New York, for example, something like a dozen sessions will be held at the same time. In some instances the federal district courts go on circuit through their territory, holding court regularly in three or four of the larger cities; again they remain stationary in a single city. Court rooms and other facilities are provided in the local federal building.

The district judges now exceed 165 in number and are appointed by the President with the consent of the Senate for an indefinite tenure,
Judges pending good behavior. For some years there was a precedent of careful investigation of the various candidates by the Department of Justice before it made a recommendation to the President. There is still some continuation of this precedent, but it is

¹ Alaska, Puerto Rico, Hawaii, the Virgin Islands, and the Panama Canal Zone also have district courts.

² The emasculated court bill of 1937 made this provision which really combines the district and circuit court stages into a single hearing.

less binding than was the case prior to 1933. In general, residents of the district are chosen as judges and President Franklin D. Roosevelt has depended in a good many instances on the local Senators and even on political machines to provide nominations. The court reorganization bill of 1937 would have made it possible to shift the district judges around rather easily so that the heavily loaded dockets might be relieved by the temporary assignment of judges from districts in which the number of cases is not large. This provision was lost with most of the other items, but it is still possible to assign judges for special work if they are willing to undertake additional service. Inasmuch as no additional compensation is paid and only \$5.00 per diem ¹ is allowed for expenses, most of the judges are not enthusiastic about helping out in other districts. Nevertheless, it is not uncommon to find judges from the hinterland sitting in the federal district court in New York City during the summertime.²

Judges are, of course, necessarily members of the bar and usually have had years of experience in legal practice. Although they receive annual salaries of \$10,000, which is distinctly less than many successful members of the bar earn privately, there is no dearth of candidates, for the tenure and prestige attached are attractive. Most of the district judges perform their duties with at least reasonable satisfaction, but there are all too many instances in which holders of the office prove themselves unfitted for the position. In addition to those who by temperament are not suited for judicial responsibility, there have been a number during the last decade who have used their positions for their own selfish advantage. A few have literally become "merchants of justice," selling their favor to litigants who would pay their price; a larger number have appointed friends and relatives repeatedly as holders of lucrative receiverships in bankruptcy. One federal district judge has recently been impeached; several others have resigned under threat of impeachment; more have been censured by Congress after investigation; while still others continue to function despite widespread criticism from the more reputable members of the bar in their districts. Proposals have been made to simplify the process of getting rid of these

Profes-
sional
Record of
Judges

¹ The judges have suggested that a \$10 per diem allowance would make service more attractive, but the government has refused to make an exception to the general \$5.00 per diem allowance.

² Justice Van Devanter even sat in New York after he retired from the Supreme Court bench.

misfits,¹ but no actual steps have thus far been taken in that direction.

The federal district courts are assisted by a number of functionaries who deserve notice. Clerks of the court enter cases on the docket and keep the records—in some districts there will be a clerk or deputy in each of several cities where the court holds sessions. United States commissioners, who are also scattered over a district, assist the court by attending to certain preliminaries. After arrests have been made on warrants which they issue, they frequently hear the evidence to determine whether the accused should be held for the action of a federal grand jury. United States marshals and their deputies maintain order in the court room, make arrests, guard prisoners, summon witnesses, serve court orders, and carry into effect as far as possible court judgments. As in the case of clerks and commissioners, deputy marshals may be stationed at various points where the district courts sit on circuit. Finally, there are the federal district attorneys and their deputies who represent the interests of the government in the cases which arise in the district courts. The duties of these attorneys may be slight in connection with civil proceedings, but in criminal cases they prepare and present the prosecution for the government. Both district attorneys and marshals are appointed by the President with the consent of the Senate for four-year terms, although it has been argued with considerable plausibility that they should be selected on a merit basis. As it is, they are the choices of the Senators and Representatives of the party in power and sometimes seem to pay more attention to political activities than to their official duties. The Hatch Act has improved the situation somewhat by removing them from offices in political organizations and the Department of Justice has taken up the slack by exercising a considerable amount of supervision over their work.

The great bulk of cases which come under federal jurisdiction are dealt with by the federal district courts. Thousands of bankruptcy cases are always pending in them—at the height of the depression more than sixty thousand at once.² The many civil cases based on diverse citizenship require a great deal of attention. Prosecutions for misuse of the mails, theft of federal

**Attachés
of the
District
Courts**

**Work of
District
Courts**

¹ In 1941 the House of Representatives voted favorably on a bill to permit impeachment of district and circuit judges by three circuit court judges to be designated by the Supreme Court. See *New York Times*, October 23, 1941.

² Bankruptcy cases were so numerous at this time that they outnumbered all other cases, both criminal and civil.

property, violations of the pure food, banking, and counterfeiting laws, transporting of stolen automobiles across state lines, as well as a good many other offenses originate here. These are the only federal courts which employ grand juries and trial juries.¹ An appeal may be taken under certain circumstances to the circuit courts of appeals—in a few instances to the Supreme Court—but the great majority of cases are settled finally in the district courts.

The congestion of the district court dockets has been a problem for many years. Pretrial procedure, looking toward reducing the delay incident to crowded court dockets, has now been accepted **Pretrial Procedure** by the judicial council after long urging by those interested in judicial reform and is in general use by the district courts. Instead of going ahead with every case which comes to their attention the district courts now attempt to weed out as many as possible before the trial stage. In certain instances it is possible to arrange a settlement out of court and that is now being done on a considerable scale under the auspices of the courts themselves. Then, too, there are numerous cases which involve irrelevant points, questions which have already been clearly decided by the higher courts, and confused charges. Instead of allowing these to remain on the docket until they finally come up in formal court sessions, thus consuming the valuable time of the judge and the various court attendants, an effort is made to have them removed from the docket, restated, or otherwise revised before the trial stage so that if they come up for trial at all they can be proceeded with at once rather than referred back to the attorneys for further attention.²

CIRCUIT COURTS OF APPEALS

Immediately above the district courts in the judicial hierarchy stand the circuit courts of appeals. The United States and its territories are divided into ten areas, over each of which is **Organization** placed a Circuit Court of Appeals. Some of these areas—for example, the Rocky Mountain states—cover tremendous territories, stretching for hundreds and even thousands of miles, while others, such as New York and New Jersey and New England, are compact in size. No attempt is made to divide the country equally

¹ Trial juries are commonplace, but there is a distinct trend in the direction of waiving this right and requesting the judge to act on facts as well as on law.

² See the *Second Annual Report of the Director of the Administrative Office of the United States Courts*, Washington, 1941.

either on the basis of territory or population, for the determining factor in establishing the circuit courts of appeals is amount of litigation to be handled. These courts are multiple-bench courts, having from two to six judges assigned to them, depending upon the pressure of business.¹ At least two judges must sit in a single case, though three is the common number. When the circuit courts of appeals have more than three judges attached, it is customary to hold more than one session at a time, in order that the docket may be kept reasonably clear. The name applied to these courts would probably indicate that to hold court they travel about within their territories; but while this is in some instances done, it is not always the case.

There are at present more than fifty judges attached to the circuit courts of appeals. In addition the Supreme Court judges are nominally assigned to the several circuits, but, because of the nature of their duties in Washington, do not currently participate in hearing cases. Circuit judges are appointed by the President with the consent of the Senate, hold office during good behavior, and receive salaries of \$12,500. They may be the personal choice of the President or they may be selected in reality by the Senators and political leaders of the dominant party. Franklin D. Roosevelt at first permitted Senators to name the new judges, but there was considerable criticism engendered by the inability of the Senators concerned to agree and by the resulting delays, sometimes two years in duration. Recently the President has apparently talked to the Senators from the states involved and then nominated well-known deans of law schools and other prominent members of the bar.²

The judges of the circuit courts of appeals are in general superior in caliber to the district judges, although the Supreme Court seems to delight in raking them over the coals for their inability to see eye to eye with it in interpreting the Constitution. Unfortunately there have been two very shocking incidents involving these judges during the last few years. M. T. Manton, senior judge of the First Circuit Court of Appeals in New York City, ranking immediately below the members of the Supreme Court, was convicted of selling judicial favors and sentenced to a term in federal prison. The evidence submitted in the case proved that he had been a "merchant

¹ District judges sometimes are called in to sit with the circuit judges if the occasion demands it.

² The deans of the law schools of Yale, Ohio State, Pennsylvania, and Iowa among others, have been recently appointed circuit judges.

of justice" for some years and had carried on wholesale frauds. President Roosevelt demanded his instant resignation and only this prevented another impeachment case. In 1941 a retired circuit judge in Philadelphia was tried for receiving bribes from the moving-picture magnate William Fox, who was a litigant in his court. In two trials¹ the jury was unable to agree, though Mr. Fox was convicted. Attorney General Biddle then asked Congress to impeach Judge Davis.

The circuit courts of appeals, as their titles indicate, have no original jurisdiction and hear only appeals from the district courts and from quasi-judicial administrative agencies of the Federal government. The scope of these courts was greatly enlarged by Congress in 1925 as a result of the efforts of Chief Justice Taft to speed up the administration of federal justice.

Work of
the Circuit
Courts of
Appeals

Inasmuch as the Supreme Court had more than it could dispose of promptly, it was decided to confer final authority on the circuit courts of appeals in suits between aliens and citizens, between citizens of different states when there was no federal question at stake, and in cases arising from the patent, copyright, admiralty, bankruptcy, revenue, and criminal laws of the United States when not more than \$1,000 was involved. Because they are of the opinion that all important cases should have access to the Supreme Court itself, many lawyers complain about the extensive power these courts have, especially about their final jurisdiction. However, a prompt consideration of cases requires some limitation on the right of appeal to the highest court.

From time to time Congress has endowed many agencies in the administrative branch of the government with quasi-judicial power. Such organizations as the Interstate Commerce Commission, the Federal Trade Commission, the National Labor Relations Board, and the Federal Reserve Board, created as they were to handle special problems from beginning to end, were given authority not only to make regulations and prosecute infractions of them, but also to assume the functions of a court in those cases. At the present time these boards and commissions occupy much the same position in the judicial hierarchy as district courts in that they have final decision in regard

Judicial
Review of
Quasi-
judicial
Adminis-
trative
Establish-
ments

¹ For reports of the second trial, see the files of the *New York Times* for July and August, 1941. Judge Davis subsequently resigned, but continued to draw his salary as a retired judge. The Attorney General sought impeachment despite the resignation. See the *New York Times*, November 22, 1941.

to facts, but their rulings on law may be revised by circuit courts of appeals. This combination of three sorts of power in one agency has seemed to many to violate the principle that the lawmaker and the prosecutor should not sit as judge. While, of course, the circuit courts of appeals have some review of decisions of quasi-judicial administrators, it has not seemed sufficiently broad to provide an adequate guarantee of justice. Hence in 1940 the Logan Bill, which provided for the review of administrative decisions in nearly all cases, was passed by both houses of Congress. After President Roosevelt vetoed it, the Department of Justice set up a committee of outside lawyers to study the problem and to make recommendations. In the spring of 1941 this committee made a report which, while split three ways on the nature and degree of review, was in unanimous agreement on the necessity of more extensive judicial review of decisions of administrative agencies.¹ It appears likely, then, that in the future the duties of federal courts, probably the circuit courts of appeals or a new court occupying the same relative position in the judicial hierarchy, will be enlarged to include more cases originating in the quasi-judicial commissions.

CENTRAL SUPERVISION OF DISTRICT AND CIRCUIT COURTS

Although the district, circuit courts of appeals, and Supreme Court have long been organized into what appeared to be a closely knit hierarchy, as a matter of fact until 1922 their unity was more apparent than real. Of course, the work of the lower courts was checked by the appeals carried to the Supreme Court, but this did not provide anything like the continuous supervision which is essential in an integrated system. In 1922 Congress passed a law which among other things provided for a judicial council to be composed of the senior judges of the ten circuit courts of appeals or colleagues designated by them and to be headed by the Chief Justice of the Supreme Court. This council was to hold annual sessions; to it all federal district judges were required to make annual reports of a somewhat detailed character which were to be used as a basis for drawing up recommendations to Congress on the one hand and the courts themselves on the other. Carrying out this assignment, the

¹ For a discussion of the complicated report of this committee by its research director, see Walter Gelhorn, *Federal Administrative Proceedings*, The Johns Hopkins Press, Baltimore, 1941.

judicial council has requested Congress to authorize the creation of additional district and circuit judgeships either on a permanent or a temporary basis and has pointed out necessary changes in the judicial system as a whole. Also it has transmitted suggestions to the various lower courts in regard to the conduct of business and the clearing of their dockets. The council enjoys some jurisdiction in transferring judges temporarily from courts where there are not a great many cases to courts which are heavily burdened and far behind in their work, though the judicial council can do little more than ask judges to volunteer for such extra labor. The reorganization bill of 1937 would have increased the authority of the council, particularly in transferring judges from one court to another. However, even without this added power, the judicial council has achieved a substantial amount of good in bringing the district courts and circuit courts of appeals into an integrated system.

The judicial council meets only once a year and must necessarily confine itself largely to recommending general changes. There is in addition the problem of supervising the lower federal courts in matters of routine. An Administrative Office of the United States Courts, immediately responsible to the Chief Justice, has recently been established in the Supreme Court building in Washington. The work of this agency is less well known and less spectacular than the labors of the judicial council, but it is, nevertheless, fairly important in bringing about a reasonable amount of uniformity in the lower courts. The suggestions which the judicial council makes to the lower courts may be implemented by assistance which the Administrative Office renders. Negotiations with individual judges for temporary service in courts other than their own can be carried on by a permanent agency of this character far more successfully than by a council in session only a few days each year.¹

Adminis-
trative
Office of
the United
States
Courts

SPECIAL COURTS

The district, circuit, and supreme courts are called "constitutional" courts because their creation was contemplated by the Constitution, although their actual establishment was left up to Congress. In addi-

¹ For additional discussion of the work of this office, see the *Second Annual Report of the Director of the Administrative Office of the United States Courts*, Washington, 1941.

tion to these tribunals which constitute what the man in the street considers the federal court system, it has been necessary from time to time to set up other courts for special purposes. These are known as "legislative" courts¹ because they have resulted entirely from congressional action and may be regulated by Congress without the restrictions in regard to such matters as tenure and salary reductions that apply to the "constitutional" courts. It may be added that the establishment of these courts is interpreted to be within the province of Congress because of authority implied from the taxing, patent, appropriation, commerce, and other powers specifically granted by the Constitution.

Perhaps the most important of these special courts is the Court of Claims which was created by Congress as early as 1855. The United States as a sovereign power cannot be sued without its own consent; yet, as a matter of fairness, some provision must be made for considering the claims of those who allege that they have suffered injury as a result of federal action. Special bills providing for the alleviation of distress caused by some agency of the Federal government may be introduced in Congress—and are brought to that body more or less regularly—but Congress has too much other work to do to give much attention to them. Besides Congress, politically motivated as it is, is scarcely a suitable body to decide what shall be done in the case of claims. The regular courts have more than they can do as it is and, being away from Washington, might not have information that would enable them to pass on a claim. Hence the Court of Claims is charged with hearing those cases against the government that Congress specifies—it should be noted that not all claims may be heard by that court.² This court has five judges, appointed by the President with the consent of the Senate for indefinite terms subject to good behavior, and holds regular sessions in Washington. It gives its attention to contractual claims brought by persons or corporations against the Federal government or referred to the court by an administrative agency or Congress. Unlike most other courts, the Court of Claims has no authority to render judgments. It contents itself with recommending the payment of certain amounts of money to litigants who

¹ For a good discussion of these courts, see W. G. Katz, "Federal Legislative Courts," *Harvard Law Review*, Vol. XLIII, pp. 894-924, April, 1930.

² For example, Congress specified that claims resulting from the devaluation of the dollar and the outlawing of "gold clauses" in contracts in 1934 should not be heard by this court.

impress it; Congress then has to appropriate the money before the claims can be paid.¹

Acting under its authority over the seat of the national government Congress has created a complete set of courts in the District of Columbia: a Court of Appeals, a supreme court (which corresponds to a federal district court), a municipal court, a police court, and a juvenile court. Most of these are of interest only to the residents of the District of Columbia, but the Court of Appeals is of wider importance because it hears appeals at times from the rulings of the administrative commissions.² Needless to say, what it decides on some of these appeals is of concern to the entire country, although the Supreme Court itself may have the final word in certain cases.

District of
Columbia
Courts

A United States Customs Court,³ consisting of a chief justice and nine associate justices, has been set up to pass on controversies arising out of duties to be paid by importers. An importer maintains that slave bracelets are hardware and should pay a duty of, say, 20 per cent, while the government claims that they are jewelry and hence should be taxed at 50 per cent. Disputes of this kind find their way into the Customs Court. Likewise, there has been established a Board of Tax Appeals which hears allegations of taxpayers that they have been forced to pay higher taxes than are justifiable under the law. Every year the Board of Tax Appeals, which despite its name is a court rather than an ordinary board, orders the refunding of millions of dollars to those who have been overcharged. A Court of Customs and Patent Appeals hears cases which are carried to it from the Customs Court referred to above and from the Commissioner of Patents. This court has final jurisdiction in most instances, although in a few matters there may be an appeal to the Supreme Court.

Other
Special
Courts

THE DEPARTMENT OF JUSTICE

The Department of Justice is, of course, not a court but an administrative department. However, many of its functions relate to

¹ On this court, see F. W. Booth, "The Court of Claims," *United States Daily*, December 1-5, 1928.

² This court is a constitutional court because of this authority. See *O'Donoghue v. United States*, 289 U. S. 516 (1932).

³ On this court, see G. S. Brown, "The United States Customs Court," *American Bar Association Journal*, Vol. XIX, pp. 333-336, 416-419, June, 1934.

the various federal courts and to the administration of federal justice. Consequently it seems more appropriate to consider it at this point than in connection with the administrative departments. From the very beginning the United States had an Attorney General, but it was not until 1870 that a Department of Justice was finally provided to handle the increasingly large volume of governmental legal business. Few departments have grown as consistently as the Department of Justice—even during the last decade it has taken on very important new duties in connection with the identification and capture of criminals, immigration and naturalization, and defense. Nevertheless, it is still by no means as large a department as the Treasury, Department of Agriculture, or the Federal Security Agency.

The Department of Justice ¹ has at its head the Attorney General who is a member of the President's cabinet. In addition to giving advice, as a cabinet member, to the chief executive and generally overseeing the Department of Justice, the Attorney General heads a division of the department which is charged with furnishing legal opinions on questions which the President and the heads of the executive departments submit to him.² Much of the actual work in this connection is, of course, performed by the Attorney General himself, though legal assistants do the spade-work. Detailed advice on points of law is given by legal sections attached to virtually all of the departments and even to agencies, such as the Maritime Commission. These legal councilors have their offices in the buildings of the departments which they advise and are for most purposes a part of those departments, but in theory they are a part of the Department of Justice. Seven assistant attorneys-general are provided as aides to the Attorney General, one to have general oversight over the department and six others to perform special duties.

Attached to the Department of Justice, although to a considerable extent more or less autonomous, is the office of the Solicitor General, which is primarily concerned with representing the Federal government in the Supreme Court. Although this office may permit the legal counsel of the several departments to prepare and present cases involving their departments before the Supreme Court, ordinarily the actual presentation is handled by the

¹ For an up-to-date book on the work of this department, see H. S. Cummings and Carl McFarland, *Federal Justice*, The Macmillan Company, New York, 1937.

² These are published in a series of volumes known as *Opinions of the Attorney General*.

Solicitor General himself or by his assistants. Needless to say, the work of preparing arguments to support the constitutionality of a far-reaching law requires not only considerable time, but marked ability and ingenuity. There is striking variation in the skill with which this work is carried on. The early years of the F. D. Roosevelt administrations were handicapped by mediocre solicitors-general who made a poor showing before the Supreme Court, but recently there has been a notable improvement both in deciding the grounds on which to argue and in presenting the cases themselves to the Supreme Court.

One of the subdivisions of the Department of Justice devotes itself to the enforcement of the antitrust laws. A decade ago there was a disposition to regard monopolistic practices as inevitable, despite any laws that might have been passed on the subject. Consequently this division did little more than occupy office space and collect salary checks. Recently there has come to this division an amazing lawyer and professor of law, Thurman Arnold by name, who has been audacious enough to maintain that monopolies are not ordained by Providence and that many of their practices are detrimental to the general welfare. He has instituted a number of suits which have received notoriety, and which he claims have resulted in savings of millions of dollars to the public.¹

Another division of the Department of Justice supervises the work of the federal district attorneys and marshals in the eighty-four district courts. Assistants are sometimes sent from Washington to aid in certain cases and on occasion even supersede the local officials entirely. Corrupt practices are checked. Conferences are called in Washington either with a single district attorney or marshal or with the entire number. Much has been done in integrating the efforts of the district attorneys and marshals as a result of this supervision now maintained by the Washington offices.

Finally, there is the Federal Bureau of Investigation which although not new has recently received unusual publicity. The G-men,² whom it stations throughout the country, have captured the imagination of the American people as a substitute for the Texas Rangers or western sheriffs of an earlier day. They have been

**Antitrust
Division**

**Supervision of
Federal
District
Attorneys
and
Marshals**

The F.B.I.

¹ In an address to the American Political Science Association delivered in Washington in 1939.

² J. Edgar Hoover, the director of this bureau, relates some of the deeds of these men in his book entitled *Persons in Hiding*, Little, Brown & Company, Boston, 1938.

active in tracking down the "public enemies" of the United States until now the most vicious gangsters are either dead or in Alcatraz. During the national emergency this bureau has spent a great deal of time and energy ferreting out spies, "fifth columnists," and other agents who plot against the United States.¹ It has built up one of the largest fingerprint files in the world to assist not only federal agents but local police in identifying criminals.

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¹ In 1941, 68,368 cases related to national defense were handled by F.B.I.; 31,640 alleged violations of the Selective Service Act were investigated; 6,182 convictions were secured. See *Annual Report of the Attorney General: 1941*.

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CHAPTER XXII

THE SUPREME COURT

THE Supreme Court is the only court specifically provided for by the framers in 1787 and even its structure is not outlined in any detail. The Constitution merely states that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." Within the broad limits of this grant Congress may freely exercise its discretion.

Among the first legislation enacted by the new Congress in 1789 was the monumental Judiciary Act which set up a number of federal courts and defined their powers. This act specified that the Supreme Court should consist of a chief justice and five associate justices, who in addition to their duties in connection with the highest tribunal in the court system should participate in the work of the lower federal courts by going on circuit through the various parts of the country. Apparently on the supposition that the Supreme Court would have scarcely enough to do in the exercise of general appellate jurisdiction over the decisions of the lower courts together with the two types of original jurisdiction conferred by the Constitution, the Judiciary Act of 1789 not only provided for the circuit duty as above but also gave the Supreme Court original jurisdiction in certain other cases. However, the court in *Marbury v. Madison* in 1804 held that the latter authority was beyond the power of Congress to confer and consequently declared that section of the Judiciary Act of 1789 invalid. In 1801 Congress saw fit to decrease the size of the Supreme Court to five; in 1807 it was enlarged to seven; in 1837 provision was made for nine seats; in 1863 its size reached a high-water mark of ten; in 1866 there was a drastic cut to seven justices; and since 1869 there have been nine members of the court. Thus it may be seen that Congress, frequently at the instigation of the President, has

not hesitated, at least prior to 1869, to make changes in the structure of the court.

Very shortly after Congress provided for the organization of the Supreme Court President Washington, in 1789, appointed John Jay and five associate justices to the bench. During the early **Early History** years there was little for them to do. Only a modicum of prestige was attached to the court during this period and justices were known to surrender their seats to accept positions in state courts. In 1795 John Jay resigned to undertake diplomatic service for the United States. He was followed as Chief Justice by John Rutledge who, borne down by ill-health, served only during 1795-1796 and was never confirmed by the Senate. Then Oliver Ellsworth assumed the post, presiding over the court until 1800. All in all, there was very little in the first decade of the operation of the Supreme Court to point to the very great role which it was to play later in the government.

Before the Federalists reluctantly turned the government over to their opponents, President Adams, in 1801, made a last-minute appointment of John Marshall as Chief Justice. At the time, **The Appointment of Marshall** this action on the part of a retiring Federalist seemed unlikely to add to the general strength of the Supreme Court, for it was regarded by President Jefferson and his associates as little short of an insult. Consequently, the size of the court was reduced to five; impeachment proceedings were started against Justice Chase, which had they succeeded would doubtless have been extended to include other members of the court; finally, President Jefferson and his fellow officers let it be generally known that they held the Supreme Court almost (if not absolutely) unworthy of respect. For a period of something like a year the court did not meet at all and then it convened only to face the open hostility of the executive and legislative branches of the government.

John Marshall had served in the Revolutionary Army, in the government of Virginia, and as Secretary of State under President Adams. He had achieved a more than local reputation as a shrewd **Contribution of Marshall** attorney, but there was comparatively little in his record to indicate that he would rescue the Supreme Court from its position of obscurity and even jeopardy and transform it into an agency of commanding effectiveness and influence. Yet that is what he managed to achieve during the almost thirty-five years of his chief justiceship. He is particularly important because he laid down the

broad outlines of a constitutional system which has continued with modifications to this day. Despite his attachment to his native state Virginia, the basic premise of Marshall's credo was that the national government must be given adequate authority. He wanted a strong government hampered neither by the petty jealousies of the states nor by a strict, literal interpretation of the Constitution. Probably the most famous and oft-quoted statement expressing his fundamental belief is the dictum from *McCulloch v. Maryland* concerning the doctrine of implied powers: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited [to the national government], but consist with the letter and spirit of the Constitution, are constitutional."¹ Starting out with the daring and unexpected decision in *Marbury v. Madison*, opinion after opinion of Marshall's laid broad outlines within which and out of which our present constitutional system has developed.

Marshall found himself somewhat of a failure as a biographer of Washington; it has been popular in some New Deal circles recently to brand his opinions as rhetorical, loosely reasoned, and unsound; but most historians have accorded him one of the first places among modern jurists throughout the world.²

Marshall was succeeded as Chief Justice by Roger B. Taney, who served during the years 1836-1864. Perhaps largely because of his association with the Dred Scott case³ and his southern background, it was long the accepted belief that despite his lengthy service he did little in the way of adding to the brilliant achievements of his predecessor. However, the careful investigations recently completed by reputable scholars indicate that Justice Taney has been a most underrated and misunderstood Chief Justice.⁴ His contribution to American constitutional development followed along the general lines which Marshall had laid down but carried those principles forward quite materially. By the end of his career on the court the doctrine of judicial supremacy had been pretty firmly established as an integral part of the constitutional system of the United States.

¹ *McCulloch v. Maryland*, 4 Wheaton 316 (1819).

² The full-dress biography of Marshall was prepared by Albert J. Beveridge in four volumes. See *Life of John Marshall*, 4 vols., Houghton Mifflin Company, Boston, 1916-1918.

³ Reported in 19 Howard 393. Decided in 1857 and declaring that Negroes could not be citizens.

⁴ See C. B. Swisher, *Roger B. Taney*, The Macmillan Company, New York, 1935.

During the years from the Civil War to the present century the role of the Supreme Court was important, but the developments were in general less spectacular than during the earlier period of **The Years Marshall and Taney. Salmon P. Chase, Morrison R. Waite, 1864-1910** and Melville W. Fuller presided over the court during the period 1864-1910 with reasonable competence, but few would place them in the Marshall-Taney class. The Supreme Court received severe criticism from President Lincoln and subsequently underwent reorganizations which increased its membership in 1863, reduced it in 1866, and finally in 1869 fixed it at its present size.

It is perhaps fair to state that the Supreme Court reached its zenith during the second and third decades of the twentieth century.¹ Its role as guardian of the Constitution was not seriously challenged; indeed judicial supremacy had become the outstanding characteristic of the American system of government. The prestige attached to the court was so great that a seat on its bench was generally regarded as the highest honor to be attained by any member of the bar, despite the greatly reduced emoluments that might result.² It was during this period that Chief Justice Taft put through the important reforms that made it possible for the Supreme Court to dispose of its business with a minimum of delay.³ These were the years characterized by such distinguished justices as Oliver W. Holmes, Louis D. Brandeis, Benjamin N. Cardozo, William H. Taft, and Charles E. Hughes.

When the Democrats under the leadership of President Roosevelt sought to have the national government cope with the problems of agricultural adjustment, industrial recovery, and business regulation incident to the depression, the Supreme Court did not hesitate to declare their efforts to be in conflict with the Constitution and hence null and void. Public opinion turned from support of the court to backing of the President, with the result that criticism aimed at the court became intense and bitter. It was argued that the Supreme Court was dominated by the vested interests, that it prevented the

¹ Professor Corwin writes of this period as follows: "The last period is the present; it is that of *Judicial Review* pure and simple. The Court, as heir to the accumulated doctrines of its predecessors, now finds itself in possession of such a variety of instruments of constitutional exegesis that it is able to achieve almost any result in the field of constitutional interpretation which it considers desirable." See *The Twilight of the Supreme Court*, Yale University Press, New Haven, 1934, p. 181.

² Chief Justice Hughes is supposed to have given up a practice of \$500,000 per year.

³ The court had been something like three years in arrears.

government from meeting the crying needs of the 1930's, that its justices were "nine old men" who were senile, infirm, and generally incapable of performing their duties.¹ President Roosevelt publicly denounced the court, consigning it with other of his opponents to the "horse-and-buggy days" he was so fond of talking about. In an address to Congress on January 6, 1937, President Roosevelt said:²

Means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world. . . . The judicial branch also is asked by the people to do its part in making democracy successful. We do not ask the courts to call nonexistent powers into being, but we have a right to expect that conceded powers or those legitimately implied shall be made effective instruments for the common good. The process of our democracy must not be imperiled by the denial of essential powers of free government.

Early in 1937, after he had been overwhelmingly reelected President of the United States, Franklin D. Roosevelt without warning sent to Congress a bill which would have brought about important changes in the Supreme Court as well as in the entire federal judiciary.³ It was asserted by his opponents that the provisions relative to the lower federal courts were intended for camouflage and that the primary aim of the President was to fill the Supreme Court with his henchmen so that he could use it as he desired. The controversial section of the bill involved the addition of new judgeships for every judge who did not retire within six months after reaching the age of seventy years; in the case of the Supreme Court a maximum size including old and new justices of fifteen was set. Other items of the bill dealt with the temporary transfer of circuit and district judges to relieve congestion of dockets, the creation of the office of proctor to assist the Supreme Court in supervising lower federal courts, and the elimination of delay in carrying cases involving constitutional points from the lower federal courts to the Supreme Court. The President maintained that Congress had the undoubted authority to carry through such changes and referred to the nineteenth-century acts

¹ See Drew Pearson and Robert Allen, *Nine Old Men*, Doubleday, Doran & Company, Inc., New York, 1936.

² *New York Times*, January 7, 1937.

³ The bill was sent to Congress with an accompanying presidential message on February 5, 1937.

which had not infrequently changed the size of the Supreme Court bench.

It is probable that even the President and his closest advisers had little notion of the great excitement which would be generated by this proposal. The newspapers gave the bill the most prominent and generous space on their front pages and devoted long editorials to its discussion. The more talk there was of the terms of the bill the more bitter raged the controversy. Proponents declared that it contained nothing that was even slightly dangerous to American institutions—indeed they asserted that the bill would rescue the country from the tyranny of the Supreme Court, which was never intended by the framers of the Constitution but which resulted entirely from usurpation. On the other hand, the opponents invoked the greatest array of arguments and evidence to prove that the enactment of such a law would mean the downfall of everything of any importance in the American system of government, even to democracy itself.

**Popular
Excitement
Generated
by the
Bill**

Middle-of-the-road citizens admitted that the Supreme Court had perhaps not been sufficiently responsive to public sentiment, agreed that there was precedent in the nineteenth century for New Deal legislation the court had thrown out, but concluded that popular approval and acceptance of the role of the court during the lengthy period stretching from 1869 to 1937 and the generally valuable service which it had rendered weighed so heavily against such a course that prudence dictated the most careful consideration. Perhaps never in the history of the country had more interest been stirred up in proposed legislation; certainly recent generations had not witnessed such a display of emotions in connection with a domestic institution, although the League of Nations may have been responsible for substantially as much excitement.

For some time it seemed likely that Congress, which had followed the dictates of the President so obediently since 1933, would pass the bill, but the pressure from the country convinced Congress that haste should not be resorted to. The Senate held the bill for five months, during which lengthy hearings were held and numerous prominent citizens expressed their views.

**The Fate
of the
Bill in
Congress**

The Senate Judiciary Committee finally voted to report adversely on the bill by a margin of 10-8. Hoping to save at least a measure of the substance of the proposal, a substitute bill, the Logan-Hatch bill, was

put forward to authorize the President to name two new Supreme Court judges. The sudden death of Senator Robinson, the administration floor leader, may have been responsible for the defeat of this bill—at any rate it was referred to the Judiciary Committee which had the effect of killing it for the time being.

Nevertheless, the battle was not entirely lost by the administration forces, for in August, 1937, a bill was signed by the President which, although not enlarging the personnel of the federal courts, expedited appeals on constitutional questions. Under this act the Department of Justice is permitted to appear in the lower courts to defend congressional statutes, the district and circuit court hearings of cases involving important constitutional questions are combined, and injunctions intended to hold up the application of federal laws are safeguarded.

Ironically enough, although President Roosevelt lost his fight to reform the court by congressional action, fate has permitted him to reform it by appointment. The retirement of several conservative justices and the death of others has permitted the President to name seven, including the Chief Justice, of the nine justices who at present constitute the court.¹ Hence President Roosevelt has had the unique experience of appointing a larger number of Supreme Court members than any other President since George Washington. It is not surprising that these appointments have gone to men who were known to sympathize with the administration's desire for increased federal powers, although in the case of the appointment of Harlan F. Stone as Chief Justice President Roosevelt advanced an associate justice appointed by President Coolidge.² The results have been as might be expected: recent New Deal legislation has been upheld and substitutes for laws declared unconstitutional during the years 1933-1936 have been found valid. Nevertheless, the new justices have not always presented a united front, thus indicating that even Roosevelt appointees do not entertain exactly the same legal points of view.³ On the first decision day of the 1941 term the court announced two five-to-four decisions and one six-to-three decision; on the second decision day one five-to-four and one six-to-three division became apparent.⁴

¹ Chief Justice Stone was already an associate justice of the court.

² Justice Stone has had a quite liberal point of view, however.

³ See, for example, *Union Pacific Railroad Co. v. United States*, 85 L. Ed. 949 (1941).

⁴ See the *New York Times*, November 18, 1941.

In these days of uncertainty and change it is very difficult to look at all into the future. What then of the future of the Supreme Court? Is it likely to be that of eclipse and impotence? Will it remain the wielder of that authority which has long distinguished the government of the United States from other governments? One of the most eminent writers on the American constitutional system points to the "rapid relegation of judicial review to a secondary role."¹ The bloodless revolution in the court achieved by President Roosevelt through his appointing power has at least temporarily dealt the prestige of the Supreme Court somewhat of a blow. Even if they agree that the changed attitude of the court is for the good of the country, observers must confess that there has been a diminution in reputation because of the method used to bring about such a change and the about-face which the court has made on certain issues. However, in this connection it must be remembered that some of this departure from an earlier position had been undertaken, or at least started, before the personnel of the court changed—the Wagner Labor Relations Act and the Social Security Act had both been upheld by the "nine old men" themselves.²

The
Future
of the
Supreme
Court

On several earlier occasions the Supreme Court has found it necessary to reverse itself, although never perhaps on as many issues as on this occasion.³ The Supreme Court has also previously engaged in conflict with the other branches of government and incurred unfavorable public opinion; yet eventually it has righted itself and gone on its way. It is quite possible that this may be the aftermath of this episode. Something will depend upon the men who make up the Supreme Court bench—the present personnel, although somewhat lacking in judicial experience and certainly not uniform in character, give promise of a reasonably favorable future. More will hinge on the preservation of democratic forms in the United States, for it could not be expected that a totalitarian government would permit a court any important influence. Not enough time has elapsed since 1937 to justify any very definite conclusion. The characterization of Chief Justice Hughes as the "greatest chief justice since Marshall" by one of the New Deal justices might lead one to believe that the new judges are

¹ Edward S. Corwin, *The President: Office and Powers*, New York University Press, New York, 1940, p. 316.

² Reported in 301 U. S. 1, 548, 619 (1937).

³ For example, the income-tax cases, and so forth.

not disposed to cut themselves away from the earlier traditions of the court.¹ It may be asserted that during the comparatively brief period that has elapsed since the personnel was changed the court has displayed more responsibility and good judgment than many predicted would be the case.

ORGANIZATION AND OPERATION OF THE SUPREME COURT

The Supreme Court is still made up of a Chief Justice and eight associate justices who are appointed by the President with the consent of the Senate for an indefinite term pending good behavior. Retirement on full pay is permitted at seventy if a justice has served ten years. Appointees have ordinarily been well along in their fifties, while the average age of the members of the bench has recently usually been over sixty and sometimes has approached seventy.² However, some of the selections made recently by President Roosevelt have involved younger men—one justice being just over forty years of age upon taking office.³ It is the custom to include men of both political faiths on the bench of the Supreme Court, although active participation in politics has not been regarded with favor during recent years—and it may be added has been quite uncommon. Both Republican and Democratic Presidents feel that it is proper to appoint members of their own party to such a point that their associates will constitute a majority of the court, but politics is not ordinarily a very important factor in the judicial acts of the justices. Thus President Hoover found it possible to nominate B. N. Cardozo, a New York Democrat, to succeed Justice Holmes, a Massachusetts Republican. Again Franklin D. Roosevelt advanced Harlan F. Stone, a New York Republican, to the chief justiceship upon the retirement of Chief Justice Hughes. A decade or so ago there was somewhat of a tradition that an appointee to the Supreme Court should have had considerable judicial experience, particularly of the appellate variety. However, President Roosevelt has not been impressed by such a convention, with the result that it seems fair to say that not one of his seven appointees has had any considerable amount of judicial background of

¹ Justice Douglas uttered these words. See the *New York Times*, June 3, 1941.

² In 1937 the average age approached seventy years.

³ Justice Douglas was born October 16, 1898, and was nominated to the Supreme Court on March 20, 1939. The average age of eight justices, not including Justice Byrnes whose age is not stated in *Who's Who in America*, was fifty-five plus in 1941. The oldest justice was sixty-nine years.

the appellate variety.¹ Two, Justices Black and Byrnes, came to the court from the Senate, while Justices Reed and Jackson were moved from the Department of Justice. Justice Frankfurter had his training as professor of law; Justice Murphy was primarily known because of his record as mayor of Detroit, governor of Michigan, and governor general of the Philippines; and Justice Douglas impressed the President by his able record with the Securities and Exchange Commission.

Geographical distribution enters to some extent into the selection of justices, but it is scarcely of first-rate significance. At the present time there is no justice with the possible exception of Justice Douglas² from the states beyond the Mississippi River, one comes from Michigan,³ three from the South,⁴ while the other four are representatives of the East.⁵ Other factors may sometimes be observed, but they are not of general consequence.

The Chief Justice is paid an annual salary of \$20,500 and the associate justices \$500 less. These are among the highest salaries paid public officials in the United States; in the federal service they are second only to the salary of the President. Allowance is made for clerical hire, supplies, and of course travel expenses incurred in the course of official business. Elaborate suites of offices, library facilities, and a restaurant are provided in the new Supreme Court building, although for many years the justices frequently had to do their work at home and even bring their lunches with them.

Considering its influence in the government, it is almost incredible that for most of its one hundred and fifty-odd years the Supreme Court has held its sessions in spare corners, so to speak. For a fairly long period the court met in the basement of the Capitol building; then for more than seventy years it had the use of the incommodious old Senate chamber. It was only after a great deal of discussion that Congress authorized the construction of a Supreme Court building during the Hoover administra-

**Geographi-
cal Distribu-
tion**

**Salary and
Privileges**

**The
Supreme
Court
Building**

¹ Justice Black served for eighteen months as Police Judge in Alabama; Justice Murphy was Judge of the Recorder's Court in Detroit from 1923 to 1930.

² Justice Douglas was born in Minnesota, graduated from college in Washington, but was admitted to the bar in New York. His professional career has been carried on in New York, Connecticut, and the District of Columbia.

³ Justice Murphy.

⁴ Justice Black comes from Alabama, Justice Byrnes from South Carolina; and Justice Reed from Kentucky.

⁵ Justices Stone and Jackson spent their professional years prior to government service in New York; Justice Roberts in Pennsylvania; and Justice Frankfurter in Massachusetts.

tion. Once committed to the plan, Congress decided to give the court the very best and appropriated money for a building that has sometimes been described as the most costly public building ever constructed in the world, considering its size. This building, located across from the Capitol on Capitol Hill, faces that building and is convenient both to it and to the Congressional Library. Its exterior of white marble and its classical lines make it stand out from its surroundings—some visitors expressed disappointment after the building was completed because they considered it glaring in its whiteness—but the years have mellowed it somewhat into greater harmony with neighboring structures. Within there is a great central hall and corridor, also of marble, the magnificent Supreme Court chamber with marble pillars and red velvet curtains, library quarters, conference rooms, offices, restaurants, and a press and telegraph room. There are those who consider the general effect of the interior cold, but the fine wood paneling in the conference and certain other rooms does something to mitigate such an impression. No expense has been spared in furnishing the building—lighting fixtures, tables, and chairs are all of the best.

The Supreme Court ordinarily begins its formal sessions in October and adjourns for the summer in May, thus setting aside a period of more than four months when it does not convene at all.

Sessions Even during the fall and winter months it takes frequent recesses of two or three weeks. Instead of meeting at nine or ten o'clock in the morning the hour of twelve has been long the accepted time for beginning a sitting. The long summer period, the numerous recesses during the remainder of the year, and the late hour of opening the court, lead some people to conclude that the Supreme Court has very little to do or at least carries on its work with a maximum of leisure. In reality it is not possible to measure the industry of the court in terms of formal sessions, for much, probably most, of the work is carried on outside of these formal sittings. In appellate courts a great deal of the work is done by the justices in their private chambers or offices—the Supreme Court probably surpasses even the highest state tribunals in this respect. Judges have to go over voluminous records submitted in connection with cases; they have to consult court reports which contain the decisions on related points of law; and finally they have to prepare the opinions in which they explain why and on what basis they have decided as they have. All of this requires much time and energy from the justices themselves as well

as from their law clerks. All in all, the members of the Supreme Court take their duties quite seriously and considering their age display above the ordinary energy.

During the time when it is not recessing the Supreme Court meets in formal session Monday through Friday of every week. Monday is known as "decision day" because the court ordinarily announces its decisions and reads its orders on that day. On Saturday the justices meet privately in the morning for a conference on the cases which they have heard during the preceding days. The public sessions are held in the chamber or hall, which constitutes the main room of the Supreme Court building, while the Saturday meetings are scheduled for the less formal wood-paneled conference room.

Promptly at high noon the justices of the court, led by the Chief Justice, file into the courtroom through their private entrance and take their places at the bench which dominates that chamber. A crier has called out to those in the corridors that the court is about to begin; the clerk of the court has given the signal which causes the attorneys and spectators to rise from their seats. As the justices in their somber black silk gowns take their places, the clerk presents them as the "Honorable Chief Justice and Associate Justices of the Supreme Court of the United States" and adds "May God save the United States." The justices sit in strict order according to seniority, with the Chief Justice in the center and the eight associate justices arranged four on either side—the two newest members occupying the seats at the extreme right and left. Although the silk gowns serve to minimize individuality, it is interesting to note that the chairs which the justices occupy, although all of black leather and of a conservative type, nevertheless are not uniform because of the custom of permitting each member of the court to select his own chair. After any preliminaries have been disposed of, including the admittance of new members to the bar of the court, the court proceeds promptly to the consideration of the cases which it has agreed to hear.

In contrast to the rank and file of courts in the United States this court does not permit long-drawn-out arguments from attorneys, the introduction of irrelevant material, or eloquent oratory. Counsel have been informed beforehand as to how much time will be permitted for arguments and they are expected to confine themselves strictly to that space. Inasmuch as most of the material is included in the printed

The
Weekly
Schedule

A Formal
Sitting

record which has to be submitted to the court before the case can come up for hearing, the oral arguments are less comprehensive and detailed than they might be. Attorneys take the opportunity of summarizing the points which they consider significant, while the justices use this as the occasion for putting questions to the attorneys in regard to aspects of the case which are not entirely clear. At about one-thirty o'clock the court halts the proceedings for lunch and at four-thirty adjournment for the day is the rule.

The Saturday morning conferences of the justices are of course carried on in the privacy of the conference room, with the result that considerable mystery surrounds what goes on. Members of the court have rarely spoken or written of the conduct of these conferences and that of course adds to the lack of knowledge. It seems probable that something depends upon the time, for it is unlikely that nine men as ripe in years and as successful in human affairs as the Supreme Court justices would allow themselves to become the creatures of petty regulations. Apparently considerable informality characterizes these conferences which are held around a large table, with the Chief Justice at one end. Various members of the court express themselves on the case which is being discussed and an attempt is made to arrive at a common agreement both as to decision and reasons therefor. At times, such as 1934, 1935, and 1936 when controversial issues were frequently before the court and there was division within the court itself, the exchange of views must have sometimes involved the display of emotions, even acrimony. Indeed Chief Justice Hughes, replying to questions of a small group which he received in the conference room in 1940, admitted that the discussion on points of law was frequently vigorous, with disagreement not uncommon, but he was quick to add that the personal relations of the justices were not affected by differences of opinion on legal questions.¹

It has sometimes been assumed that the Chief Justice exercised wide freedom in appointing colleagues to prepare opinions which contain the reasons for a certain decision in a case and that he often seized on the most important cases for himself.² On the occasion referred to above, Chief Justice Hughes took issue with this assumption and asserted that the role of the Chief

¹ This statement was made to the 1940 Institute of Government sponsored by the National Institute of Public Affairs and the United States Office of Education.

² Chief Justice Marshall is pointed to as an example of this practice.

Justice in such a matter was far less than many imagine. He reminded his visitors that the Chief Justice has nothing to do with designating the writer of the majority opinion in those cases in which he himself belongs to the ranks of dissenting justices. Moreover, he declared that even in those instances where the Chief Justice agrees with the majority of his colleagues he ordinarily has little leeway in naming the particular justice who will prepare the opinion, for as a rule one of the justices will advance a line of reasoning which will impress the other judges as logical and sound. It is customary for the Chief Justice to assign this justice the task of preparing the opinion, unless the latter be unusually burdened already, in ill health, or otherwise ruled out.

The Supreme Court arrives at decisions by simple majority vote, with a minimum of six justices required as a quorum; on those occasions when there is a tie because of the lack of a full bench the case will be reargued, or if there is no rehearing, the decision of the lower court will be upheld. This requirement leads to the five-to-four splits of the court which have occasioned not a little concern to some observers, who point out that not much confidence can be put in a decision when the judges themselves are so evenly divided. Prior to 1934 there had been comparatively few instances of such a split in the court—only about a dozen altogether which involved important points of law, or an average of less than one every ten years. Then in a brief period the court handed down a number of important decisions by five-to-four votes.¹ There is reason to believe that the rather frequent instances of such a division during the difficult years of 1934–1937 contributed to the drop in the prestige of the court and consequently were to be regretted. With the new court personnel, five-to-four decisions strangely enough still are by no means uncommon; consequently it may be stated that in the eyes of many a strong case can be made for the substitution of an extraordinary majority for the present simple majority. It is true that this would still make the vote of one justice the determining factor, but there would be less room for contending that the decisions of the court are meretricious and a matter of accident.²

¹ Among these may be cited: *Perry v. United States*, 294 U. S. 336 (1935); *R. R. Retirement Board v. Alton R. R.*, 295 U. S. 330 (1935); *Carter v. Carter Coal Co.*, 298 U. S. 238 (1936); and *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U. S. 813 (1936).

² For a more detailed discussion of this matter, see C. G. Haines, *The American Doctrine of Judicial Supremacy*, rev. ed., University of California Press, Berkeley, 1932, pp. 469–475. Several bills looking to such an end have been introduced in Congress—in 1823, 1824, 1867, 1911, 1921, 1923, and so forth.

It has been noted that the Supreme Court not only decides cases but that it prepares opinions which explain why it has decided exactly as it has. Over a period of years these opinions may be regarded as of greater importance than the decisions themselves. Decisions have to do with questions which are often of immediate rather than long-range import, whereas the opinions may be so closely reasoned and cover such ground that they will be referred to again and again by the court in future cases. Moreover, the opinions frequently include *obiter dicta*—or supplementary statements on legal points—which may be made the basis for subsequent action by the court. The drafting of opinions calls for a great deal of legal research into judicial records of the past as well as the most careful phrasing and organization. Some justices have proved that they are pastmasters at this sort of work, while others have been responsible for opinions that are involved, illogical, and crude. While not written for popular consumption and couched in words that may seem technical to those not familiar with legal terms, the opinions of Chief Justice Marshall, Justice Holmes, Justice Cardozo, and certain other judges are striking examples of fine writing, impressive clarity, and logical organization. Dissenting justices frequently submit dissenting opinions which set forth the reasons for their disagreement with the majority of the court. Concurring opinions occasionally appear when justices agree with their colleagues as to decision but not as to basic reasoning. The court does not announce its decisions until the accompanying opinions have been prepared and printed. Eventually the opinions are published in volumes known as *United States Reports* which appear at the rate of two or three each year. These reports, which are to be found in any law library of any consequence, are commonly referred to thus: 305 U. S. 55, which means volume 305 of the series, page 55.¹

THE WORK OF THE COURT

In the term which began in October, 1940, and ended in May, 1941, 1,094 cases were filed in the Supreme Court, which, it may be added, was 31 more than had been brought in the preceding term. Of these, 979 were disposed of by the court during the term, or 37 more than the year before, leaving 121 cases on the docket for subsequent action. However, the court had completed work on 54 of

¹ Before 1882 the reports of the Supreme Court were published by the clerks of the court and bore their names: thus there were four volumes of Dallas, nine of Cranch, twelve of Wheaton, sixteen of Peters, twenty-four of Howard, and so forth.

these 121 cases when it adjourned which left actually only 67 cases unfinished.¹ The greater part of these 1,094 cases were not considered of sufficient importance by the court to justify detailed attention; in 286 cases opinions were prepared while in the remaining 693 cases the court refused to look into the actions of lower courts or upheld such courts without recourse to an opinion.²

In two types of cases the Supreme Court receives original jurisdiction from the Constitution and hence considers cases which have not been appealed from lower federal or from state supreme courts. One of these categories involves cases which have Original
Jurisdiction to do with the ministers and ambassadors of foreign countries in the United States. Inasmuch as these officials are not subject to the jurisdiction of American courts under international law and diplomatic usage, no cases of this sort ever arise. It may be wondered why the framers placed such a provision in the Constitution under such circumstances. Was it because international law was different at that time or because they were ignorant of its provisions? The explanation is that they wished to avoid any embarrassment, were not certain that state and lower federal court judges would be familiar with international law, and hence limited such cases to the highest court, with the expectation that its judges could be depended upon to refuse jurisdiction.

The second type of case is that in which two or more states are engaged in controversy, the United States is suing a state, or the United States is being sued by a state or states. These cases are not very numerous, although at any time several of them are usually to be found on the docket of the Supreme Court. Even in this day there are disputes as to state boundaries, which after fruitless negotiations on the part of state officials usually find their way to the highest court.³ Then there are disputes over the use of natural resources, such as the water of rivers and lakes. One of the most important cases of this character was that which pended for many years and had to do with the diversion by Chicago of large quantities of water from Lake Michigan. Wisconsin, Michigan, Ohio, and other interested states asked the Supreme Court to order Illinois, as the legal parent of Chicago, to cease such a practice.⁴ At times the states will make agreements

¹ Action on these fifty-four cases was to be announced in October, 1941.

² In 1939-1940, 252 cases involved opinions. See the *New York Times*, June 2, 1941.

³ Indiana, Kentucky, Oklahoma, and Texas have recently argued over boundaries.

⁴ Chicago was ordered to reduce the water diverted. See *Missouri v. Illinois*, 180 U. S. 208 (1901); 200 U. S. 496 (1906).

which they later wish to ignore. Some of these are of such a nature that they cannot be enforced by court action, but others involve contractual obligations. Thus Kentucky sued Indiana to compel the latter state to proceed with an agreement to build a bridge over the Ohio River which one administration had entered into but a succeeding set of state officials had refused to honor. Although not very numerous, these cases ordinarily require considerable time on the part of the Supreme Court and may pend over a period of years.¹

The great majority of cases that come to the Supreme Court are appealed to that court from the highest state courts or from lower federal courts. At different periods in the history of the United States the exact extent of appellate jurisdiction has varied, but there has been a general trend in the direction of cutting it down. When W. H. Taft became Chief Justice, he found that the Supreme Court was distinctly behind in its docket and devised means for a more prompt disposal of its work. Acting on such recommendations Congress further limited the cases that could be appealed to the court, much to the consternation of many lawyers who felt that almost every case of more than routine consequence ought to be permitted a hearing in the highest court of the land. At present only two varieties of cases may be carried beyond the highest state court or the Circuit Court of Appeals in the federal system: (1) where it is asserted that a right or provision of the national Constitution, treaties, or statutes has been denied or ignored, and (2) where a state law or a provision of a state constitution is alleged to conflict with the national Constitution, treaties made under the authority thereof, or laws passed in pursuance thereof.

Cases in which it is maintained that some right or provision of the federal Constitution, treaties, or laws has been denied or transcended come in considerable numbers to the Supreme Court and are frequently of far-reaching importance. At the same time if there is no other basis for getting a case to the highest court it will be alleged that such denial has taken place, with the result that many petitions are turned down in short order. The series of cases which received so much attention and caused so much controversy during the first term of President Roose-

¹ The Chicago Drainage case has received the attention of the court for about twenty years. Perhaps it should be said that a series of cases arising out of the diversion of water by Chicago has occupied the attention of the court. As recently as 1940 such a matter received a hearing.

vult belong to this first category. Congress, acting very largely under administration strategy, enacted the N.I.R.A., the A.A.A., the Guffey Coal Act, and other legislation designed to assist the national government in meeting the economic depression. In all of these cases certain parties affected by the laws refused to obey their provisions and either sought injunctions to stay the execution of the laws or were proceeded against by the Department of Justice. The lower federal courts sometimes decided that the laws were valid and again that they were invalid. Where it was held that the laws were valid, the parties who were immediately affected carried their cases to the Supreme Court, asserting that such laws were beyond the power of Congress to enact under the grants made by the Constitution. The Supreme Court then examined the laws, compared their provisions with the specific clauses of the Constitution, and found that they were null and void because no such authority was conferred on Congress.

Many citizens apparently are of the opinion that the chief pastime of the Supreme Court through the years has been that of throwing out acts of Congress. Actually the court record is one of restraint, at least on the basis of numbers. Prior to 1934 approximately sixty acts of Congress had been thrown out by the Supreme Court—or an average of less than one every two years. During the period beginning in 1934 the court cast aside its restraint to some extent and within a few months declared quite a number of congressional statutes unconstitutional; but even so, the total number now approximates only seventy—or still an average of less than one every two years, basing the calculation on the more than 150 years of the history of the republic.¹

The number of cases arising out of alleged conflict between state action and the federal Constitution, treaties, or laws is also large. Many more state laws have been declared invalid by the Supreme Court than might be supposed by a casual observer, for most instances of this character receive far less publicity than corresponding action involving congressional statutes. Altogether, the total effect of these decisions has been very great, particularly in wearing down the scope of state author-

Number of
Laws
Declared
Invalid

Cases
Arising
out of
State Acts

¹ For a list of these statutes as of 1937 when the rate of court vetoes had subsided to its old level, see *Congressional Digest*, Vol. XVI, p. 75, 1937. A very good discussion of this topic will be found in C. G. Haines, *The Doctrine of Judicial Supremacy*, rev. ed., University of California Press, Berkeley, 1932, pp. 541-572. He lists sixty cases during the years 1792-1928.

ity and in the enlargement of federal powers. Every session of a state legislature enacts hundreds of statutes which may be objected to by those affected. These interested parties may seek an injunction from the courts to restrain the enforcement of such acts or they may wait until state officials have proceeded against them for violation. In any case the parties concerned frequently maintain that the state legislation denies them due process of law in that it takes away their life, liberty, or property, especially their property, without due process of law. Or they may declare that such laws deny them equal protection of the law as guaranteed by the federal Constitution. Again they may contend that they are engaged in interstate commerce and that such regulation on the part of a state exceeds the authority of a state in the commerce field.

Those persons who desire to carry their cases to the Supreme Court after they have been started in state courts must exhaust every state remedy before they take that step. In other words, the Supreme Court of the United States will not hear cases that come directly from the lower and intermediate state tribunals. First of all, it must be shown that the highest court in a state has denied the right sought or justified the error complained of; only then will the Supreme Court consider taking jurisdiction. Nor will the Supreme Court take cases which do not involve those directly affected by state or federal statutes. Where large numbers of persons and corporations are interested, as in the N.I.R.A., several parties may join together to finance the litigation and may even request that they be permitted to be heard by the court, but the chief litigant must be one who has real interest. This, of course, means that the court passes only on those acts which come to it in connection with cases and then only those on sections or aspects of the acts which are necessary to an examination and decision of the case. Hence, it is sometimes several years before the Supreme Court has occasion to pass on a controversial statute. Advisory opinions are not rendered by the federal Supreme Court to the legislative and executive branches, although it is not uncommon for state supreme courts to exercise such a function.

Perhaps the most telling criticism that can fairly be aimed at the appellate process takes the form of inordinate costs.¹ In a democratic government it would seem that even the Supreme Court should be

¹ R. H. Smith, *Justice and the Poor*, Charles Scribner's Sons, New York, 1919, deals in considerable detail with the general problem.

**Limitations
in Regard
to Appeals**

available to every citizen however humble if the case which he has involves a question of first-rate legal importance. Under that supposition the cost of bringing cases to the highest tribunal in the United States should be very reasonable indeed. Yet strangely enough, there is probably no court in the world where it costs any more to have a hearing, while in most countries appeal to the highest court involves far less in the way of expenditure. Records in the case, which rarely run under two or three printed volumes and may go to ten or so, must be printed and that alone may involve a cost of many thousands of dollars. Counsel must be employed at considerable expense and their transportation and hotel bills to, from, and in Washington must be met. Altogether it is unusual for an appeal to cost less than \$7,000 or \$8,000, while bills of \$50,000 to \$100,000 are not uncommon. It would scarcely seem that the Supreme Court is any place for a poor man; or indeed the rank and file of citizens, to go. Even the Schechter Brothers, despite all of the financial assistance received from well-wishers who hated N.R.A., shortly found themselves in bankruptcy court, largely, it is reported, because of the strain of meeting the costs of *Schechter Poultry Company v. United States*.¹ It is only proper to note that the Supreme Court has a modest fund which it may use to assist impoverished litigants in meeting their printing bills, but this is but a drop in the bucket in making it within the realm of feasibility for the rank and file of citizens to avail themselves of the services of the Supreme Court.

Criticisms
of the
Appellate
Process:
Excessive
Cost

Lawyers frequently complain that the Supreme Court is too unwilling to receive cases which ought to have its attention. They criticize the rules which govern the appellate jurisdiction of the court and furthermore declare that the Supreme Court is not sufficiently liberal in applying these rules. They are fond of pointing out that the Supreme Court refuses far more petitions to hear cases than it actually accepts; out of a thousand or so cases that are filed with the clerk of the court no more than two or three hundred will receive the attention that goes with an opinion. It is difficult to determine the fairness of such a criticism. The reply has been made that the Supreme Court is not supposed to pass on every important case but only those involving vital issues of far-reaching import that have not hitherto been ruled on. It has been suggested

Limited
Jurisdiction

¹ 295 U. S. 495 (1935).

that the Supreme Court might be organized into several sections, such as are characteristic of most top courts in foreign countries. However, there is the difficulty of obtaining uniformity of interpretation under such a system. Furthermore, with the Constitution specifying "one Supreme Court" there might be some question as to the legality of such a reconstruction.¹

Another criticism frequently voiced comes from those who would make the Supreme Court less dependent upon lawyers. Most of the **Training of Justices** questions which the court has to consider relate to economic and social matters; a good many involve scientific processes and inventions. It is maintained by some critics that lawyers have had almost no training in business or social service and that they consequently display the greatest ignorance when it comes to passing on cases that have to do with business practices and social issues. Scientists wax even more eloquent when they condemn the lawyer-justices of the court for their decisions dealing with patents and other scientific matters; it is asserted that the judges show by their very references that they do not have the slightest notion of the basic principles in such processes. It may be that President Roosevelt has indicated that he shares these points of view by appointing Senators, law school teachers, and administrative officials to the court. Justice Brandeis, although a lawyer, certainly felt that the court should do more than view social and economic questions from the narrow legal viewpoint; his opinions frequently brought in such fresh approaches.²

¹ Former Attorney General Jackson, recently appointed to the Supreme Court, criticizes the judicial process as follows: "This is a government by lawsuit. . . . These constitutional lawsuits are the stuff of power politics in America. . . . The court may be, and usually is, above party politics and political parties, but the politics of power is a most important and delicate function, and the adjudication of litigation is its technique. . . . Judicial justice is well adapted to insure that established legislative rules are fairly and equitably applied to individual cases. But it is inherently ill-suited, and never can be suited, to devising or enacting rules of general social policy. Litigation procedures are clumsy and narrow, at best; technical and tricky, at their worst." He quotes from the dissenting opinion of Justices Black, Frankfurter, and Douglas in *McDarroll v. Dixie Lines*, 309 U. S. 176, 198 (1940): "Judicial control of national commerce—unlike legislative regulations—must from inherent limitations of the judicial process treat the subject by the hit and miss method of deciding single, local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution." *Struggle for Judicial Supremacy*, Alfred A. Knopf, New York, 1941, pp. 287-288, 290.

² It may be suggested that students examine some of Justice Brandeis's opinions, especially where he has dissented. Also see A. T. Mason, *Brandeis: Lawyer and Judge in the Modern State*, Princeton University Press, Princeton, N. J., 1933.

The difficulty in this connection is very complicated in this age of specialization. To bring to the Supreme Court bench experts in every field would make a court of gigantic proportions. If expert courts were set up to handle each type of case, there would, in all probability, be the lack of uniformity that characterizes the lower federal courts. The fact that briefs are frequently drawn up by technical experts and masters who have special knowledge of a field are sometimes appointed by the Supreme Court to take testimony and present recommendations serves to offset to some extent any narrowness in background on the part of the justices themselves.

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SECTION IV

THE NATIONAL GOVERNMENT:
ADMINISTRATION

CHAPTER XXIII

THE PROBLEM OF ADMINISTRATION

THE problem of administration is the most recent addition to the list of general governmental perplexities not only in the United States but in virtually every other country. The world has witnessed the exploits and misdeeds of kings and monarchs, tyrants and dictators, presidents and prime ministers for centuries, until one wonders whether they can bring forth anything new, despite the "New Order" proclaimed by Hitler. Although they have had lengthy periods of eclipse and occasionally have been dispensed with altogether, parliaments, congresses, senates, and diets are also of long standing in the field of government. Courts of one kind and another have been traditionally associated with political institutions. And, of course, it cannot be argued that the complicated administrative machinery, now so striking a characteristic of modern government, sprang up overnight. National defense, in so far as it belongs to the administrative field, antedates kings and parliaments—even in the earlier tribal stage people had to defend themselves against the onslaughts of their enemies. Irrespective of whether they be large or small, democratic or totalitarian, old or new, governments have never as yet discovered a means of getting along without money. Hence the roots of public finance go so far back in the past that dimness prevents any very clear picture. Even the newer administrative agencies perform functions that were not entirely unknown in past centuries. The ancient Egyptians apparently regulated business practices somewhat, while the Babylonians made some provision for the care of the aged. But until comparatively recently governments gave only a modicum of attention to what is now included in administration. The collection of taxes was often "farmed" out to private individuals who paid the government a specified amount and then gouged as much more out of the people as the traffic would bear. In other words, while certain functions now associated with administration have long been performed, there was not the detailed consideration, the organized attention, the elaborately planned programs, and the high degree of professionalism which characterize them today.

The government which was organized in 1789 started out with a President and Vice-President and a full-fledged Congress and very shortly added a complete system of federal courts. In addition, there was a Secretary of State to assist the President in foreign relations, a Secretary of the Treasury to supervise the collection and paying out of tax money, and a Secretary of War to do what he could with the tiny army which the young republic boasted. An Attorney General was provided to furnish legal advice to the President, and a Postmaster General was placed in charge of the mails. These five officials together with scarcely more than a handful of helpers constituted the administrative service of the United States. Within a few years it was held desirable to add a Navy Department to the little group already struggling to meet the problems confronting the country. It was not until sixty years after the founding of the United States that the Interior Department was established. Then there was a long pause which brought civil war and reconstruction but comparatively little drastic change in the administrative setup. The Department of Agriculture was not created until the centennial year, although a modest beginning had been made in starting independent establishments by the congressional authorization of the Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887.

In 1889, after the government had been in operation for a century, the United States had eight departments and two commissions, with slightly over one hundred thousand civil employees. The succeeding half a century has added two major departments, three agencies that can only with difficulty be distinguished from departments, and over fifty independent establishments. But this does not begin to tell the story, for the departments already in existence expanded their programs and added thousands of new employees. A better idea of the tremendous growth of administration during the last half a century may be gained by a realization that the number of federal employees has increased some tenfold while the expenditures have jumped even more strikingly. Indeed we have spent in a single year recently not so much less than we spent during the first century of the existence of the government.¹

¹ It is difficult to compare expenditures of different periods because of the varying statistics available. Nor is it particularly fair to compare national emergency expenditures in 1942 with routine expenditures during ordinary times. However, on a per capita basis we spend at present from ten to forty times as much as was expended at any time during the first century of the republic.

CAUSES OF ADMINISTRATIVE EXPANSION

There is a good deal of loose talk about the reasons for the expansion of the administrative side of government in the United States. Hearing some people rave, one might imagine the entire administrative system to be a giant bloodsucker attached to the body politic which cannot be removed because it has grown stronger than government itself. It is popular among these people to refer to the "good old days" when the people were not pestered by a multitude of regulations and an army of functionaries. By and large these people regard administration as an unnatural perversion which threatens not only individual freedom but the very existence of the country. This point of view seems so absurd that many informed persons refuse to give it even momentary attention. On the other hand, the very fact that it is held by so many people indicates an alarming misunderstanding. No one can justify all of the practices of administrative agencies in the United States—there has been great waste of public funds at times, terrible blundering, and inexcusable working at cross-purposes. But one cannot judge an entire system by isolated examples, any more than one can condemn all business because of some cases of dishonesty, unreasonably high profits, and striking inefficiency, or the church because of venal clergy, or the home because of irresponsible parents.

Popular
Miscon-
ceptions

An examination of the administrative services will indeed reveal many imperfections that should receive careful attention from both government and citizens, but it will also show large numbers of hard-working people, numerous valuable services, and a considerable degree of efficiency. While there has been a certain amount of maneuvering on the part of administrative agencies to expand their staffs and their functions, it would be far from accurate to say that this explains in any large measure their present status. The administrative side of government develops as the population becomes congested and as social and economic problems multiply and increase in complexity. When a country has a small population scattered over a large territory, its economy is not likely to be highly industrialized nor are its social problems apt to be acutely complicated. Beyond furnishing protection against external enemies, maintaining a reasonable amount of law and order, providing public schools, and constructing a few roads and canals, it is scarcely necessary for the government to exert itself. High finance

Growth
Caused by
Changing
Conditions

does not flourish and hence does not need regulation; relations between labor and capital are personal and simple enough to be handled individually; unemployment is uncommon and large-scale relief unnecessary; business is not monopolistic and constitutes no threat to the public interest. Of course, administrative activities are few in number and simple in character under these circumstances, for private initiative can take care of problems in a reasonably satisfactory manner. True, health may not be what it ought to be; farmers may not receive their fair share of the national income; and child care may be neglected; but these must be regarded as necessary evils since the government does not have the resources to engage in elaborate programs aimed at their amelioration.

As a country emerges from a stage of sparse settlement and enters one of huge urban concentration and as industrialization appears, the need of administrative services is manifest. When people live in villages or on farms, maintaining law and order is relatively simple—a single policeman may be able to supervise two thousand or more people. Put those same people in New York City and their temptations and irritations become such that it requires one policeman for every three hundred or so inhabitants. Industrialization largely causes the disappearance of the tiny workshop in which the master and his few employees can discuss their mutual problems during their daily encounters. Organized labor develops to represent workers in their negotiations with owners who may live in a remote city and have little or no personal contact with their employees. Complicated machinery produces many hazards and leads to accidents—the government is then forced to protect the worker by setting up systems of workmen's compensation. Ruthless men of affairs, driven on by the desire for gain, manufacture harmful food and drugs, sell valueless securities, and otherwise prey upon hundreds of thousands and even millions of people whom they do not know and who hence mean little or nothing to them. Again the government is forced to intervene to protect the "productive from the predatory," the sheep from the wolves.

Despite the ingenuity and initiative of private business, the economic machinery which is geared to industrialization breaks down periodically. Millions of persons are thrown out of work; banks close; the specter of starvation haunts hundreds of thousands of households. Even the billion-dollar corporations find themselves unable to cope with the situation. Maddened

**Industrial-
ization and
Urbaniza-
tion**

**Economic
Depres-
sions**

with fear and driven on by their disappointment, the rank and file of the people turn to the government in desperation. The government must give relief; it must set up "made work"; it must pour billions into the economic engine, hoping that by this priming it may start to run again. A large part of the administrative machinery of the Federal government in the United States was created in the years following the breakdown in the economy which started in 1929.

Industrialization is ordinarily accompanied by an increase in national wealth which in turn leads to a psychology quite different from that associated with a simpler society. When the entire population is on the very margin of subsistence, those who have the misfortune to sink below do not expect any considerable help from outside sources. Fate has not dealt kindly with them, but they grin and bear their disaster as best they can. However, in a country in which millionaires are commonplace and the salaries paid business managers may run to \$300,000 per year, popular psychology is transformed. The unemployed see no reason why they should starve or even why they should accept employment at a few cents per hour while their fellow countrymen maintain town houses, country houses, winter resorts, and summer cottages, are served by retinues of servants, and drive around in an assortment of sporty cars. Inasmuch as there are millions of these unfortunates, their demands can be insistent, particularly in a government in which votes determine elections. An examination of the administrative activities of the national government reveals a number of elaborate projects traceable in whole or in part to the psychology built up by complacent comparison of the wealth of the United States with that of other countries. A country which has a national income every year that approximates the total national wealth of a great power like Japan can afford to be generous in caring for its unfortunates. At least that is the argument of large numbers of people.

The national government has been affected by these developments somewhat more recently than the state and local governments. As long as problems were relatively simple, they were, under our federal system, largely handled by the states and their local subdivisions. Thus for decades we have had poor relief administered by counties and cities. When, however, the demands become so great that they exceed the resources of the local governments or when the situation develops such complications that even

Psychology of
Plenty

Recency of
Federal
Expansion

state programs prove futile, then people turn to the national government. Many of the administrative activities undertaken by the national government since 1932 fall into this category.

ORGANIZATION OF THE NATIONAL ADMINISTRATIVE SYSTEM

The elaborate administrative system of the national government is very largely based on laws passed by Congress. The Constitution makes no provision for administrative organization beyond implying that the President shall have general oversight. Acting under its enumerated powers or on authority implied therefrom, Congress has passed a large number of acts which provide for the creation and general organization of administrative agencies. The President, both under his constitutional authority and under powers conferred on him by Congress, has issued executive orders which set up emergency agencies of a temporary character and which furnish the details relating to the organization of more permanent departments.

The very fact that the administrative departments are for the most part the creations of Congress makes for a lack of uniformity which immediately strikes even a casual observer. Congress, encumbered with many cares, does in general only what is immediately necessary. Therefore, it has set up the administrative system piecemeal rather than as an integrated whole. Public opinion demands the regulation of certain business practices and Congress responds by establishing a Federal Trade Commission, which, although concerned with some of the same problems as the Department of Commerce, is given its own independent status. At another time there is widespread interest in a program which will assist the home owners to save their property from mortgage foreclosure, so Congress produces the Home Owners' Loan Corporation. Youth feels that it has borne more than its share of the depression and persuades Congress to create a National Youth Administration. Many of these agencies might have been tacked onto already existing departments, but Congress is usually reluctant to do that for several reasons. In the first place, there has long been a good deal of suspicion of the administrative departments on the part of the members of Congress. Both Congress and the administrators have been head over heels in politics, but the politics have not been of the same variety. Congressmen are immersed in party politics which the administrative people

often refer to in slighting terms. Yet after condemning Congress for playing politics, especially for displaying a fondness for the spoils system, the administrators proceed to demonstrate what heights (or depths) can be reached by departmental, interdepartment, and personal politics. The congressmen cannot understand how their comparatively innocuous brand can be castigated by those who seem to be able to develop ingenious, less aboveboard, but nonetheless effective tactics.

Then, too, the members of Congress cannot help resent the current emphasis upon administration. As the lawmakers, they are charged with shouldering the responsibilities of the United States; yet the administrators frequently steal their thunder and assert that except for their efforts the government could not exist. Congressmen get along with a suite of from two to five offices which, though well enough furnished, appear very modest indeed when compared with some of the beautiful offices occupied by administrators who are not even heads of departments. Adding more functions to existing agencies would merely serve to increase an importance which seems already too overweening. Finally, there is always the specious argument that a new agency may be temporary in character and hence should be constructed in such a fashion that it can be pulled down when the occasion is ripe.

**Congressional
Attitude
toward
Administrative
Agencies**

At the center of national administration, Congress has placed the ten great departments which in certain instances are almost as old as the republic itself.¹ Even these are not particularly uniform in character, for some of them employ ten times as many workers, expend several times as much money, and are charged with much heavier responsibilities than others.² Almost on a par with these ten departments there are three new "agencies" which can only with difficulty be differentiated from the former. The Federal Security Agency, Federal Works Agency, and National Housing Agency employ numerous persons, spend enormous sums of money, and wield impressive authority—indeed they would seem to

**Varieties of
General
Form**

¹ Three departments, State, War, and Treasury, claim to be older than the government in which they are now organized. They base their argument on an allegation of descent from agencies of a similar function under the Continental Congress and the Articles of Confederation.

² The Treasury Department, for example, overshadows the Labor Department on virtually every count.

eclipse the less important departments. Then there are numerous so-called "independent establishments," some of which are half a century old and others only a few months advanced from infancy. The favorite label attached to these independent establishments is "commission," but there are also "offices," "bureaus," "boards," "councils," "authorities," and "administrations." The Interstate Commerce Commission has a staff of some twenty-five hundred persons, occupies a large building, and exercises a great deal of authority. At the other extreme, there are independent establishments that have only a handful of employees, rate only a few rooms in some obscure corner, and would scarcely leave a ripple if they disappeared from sight. In between these poles there are numerous bodies which are at least reasonably important—the Federal Trade Commission, the Federal Power Commission, the Federal Communications Commission, and the Federal Reserve Board, for example.

The ten departments and the three agencies have single executives at their head, although they may have boards to assist in certain aspects of their work—the Federal Security Agency, for example, includes the Social Security Board. Some of the independent establishments also have single heads, but the more common picture is the board, which ordinarily runs anywhere from three to eleven in number. It might be supposed that the departments and the agencies would administer work which calls for prompt decision and clear-cut responsibility, whereas the independent establishments would be quasi-judicial or quasi-legislative in character. But this is not necessarily the case, for the work of an independent establishment headed by a board is sometimes scarcely distinguishable in general character from that of a department. Some improvement has been made in recent months in reducing the use of boards to those agencies which have deliberative functions, but there are still cases where establishments headed by boards are given more or less routine responsibility.

Though there is some divergence among the administrative establishments in internal organization, the uniformity seems to be greater than in the broad outline of structure. There are subdivisions which are designated "bureaus," "services," "offices," and "divisions," headed by chiefs, commissioners, directors, comptrollers, and so forth, but there is actually often less difference among them than the titles would imply. In other words, a

**Board
versus the
Single-
head Type**

**Internal
Organiza-
tion**

ORGANIZATION OF THE DEPARTMENT

NOVEMBER 24, 1941

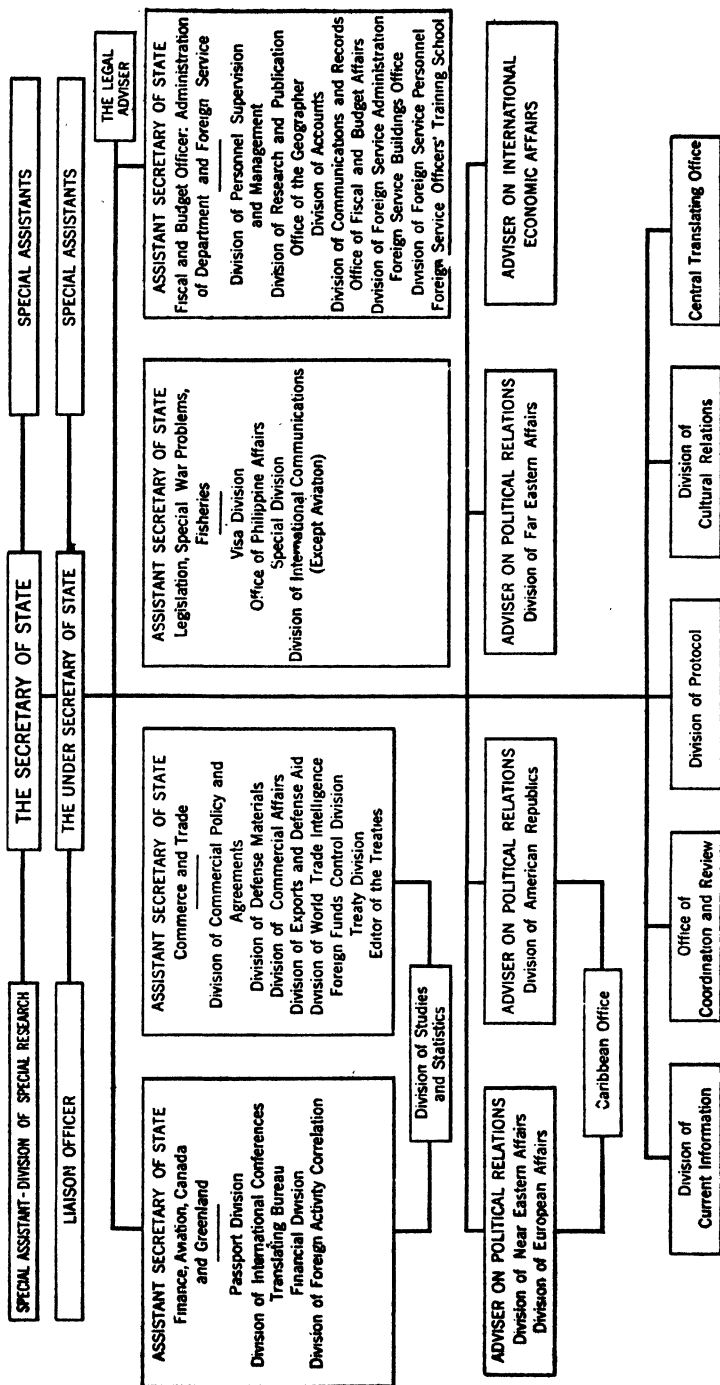


FIG. 2. The Department of State; an example of a long-established administrative agency with a single head. Adapted from a chart prepared by the Department of State.

"bureau" in one department may be very similar in form and functions to a "division" in another department; an "office" may differ only in minor details from a "service." All of the departments and establishments of any consequence are subdivided into sections which carry on the duties entrusted to them. These are headed by single officers who, though sometimes appointed on a political basis, tend to be professional in background and on a more or less permanent tenure. The secretaries, undersecretaries, assistant secretaries, administrators, directors, and commissioners who are in general charge of the administrative agencies are almost invariably political appointees who go out of office when a new President is inducted or at least as soon as their terms have expired.¹

AUTHORITY OF THE ADMINISTRATIVE AGENCIES

As we have noticed in the organization of the administrative departments, Congress is the chief source of the authority exercised. The Constitution confers powers on Congress which by their very nature cannot be directly carried out. When the necessity of using these powers has appeared, Congress has enacted general laws which instruct administrative departments what their responsibilities are in such a connection. The latter, then, as agents of the legislative branch, proceed to perform the duties which have been placed upon them. In addition, it is possible for the President to ask the administrative agencies to assist him in the conduct of his constitutional duties. He may not find it convenient or satisfactory to take care of the immediate tasks which are involved in his pardon power and consequently may use the Department of Justice for this purpose, depending himself upon the recommendations which it makes. It should be remembered at this point, however, that neither the Congress nor the President can delegate their authority completely to an administrative agency,² though there has been a distinct trend toward granting extensive political discretion to administrators. Congress or the President must give general instructions about what is to be done, either by laws

¹ Heads of commissions often are appointed for four- or six-year terms and usually hold office until their terms expire.

² See *Schechter Poultry Corporation v. United States*, 295 U. S. 495 (1935). In 1941, however, in *Opp Cotton Mills v. Administrator of Wages and Hours*, 85 L. Ed. 407 (1941), the Supreme Court sanctioned a considerably greater degree of delegation than it had previously, when it held constitutional the provision enabling the Wages and Hours Administrator to determine the wage standards necessary to permit a product to be sold in interstate commerce.

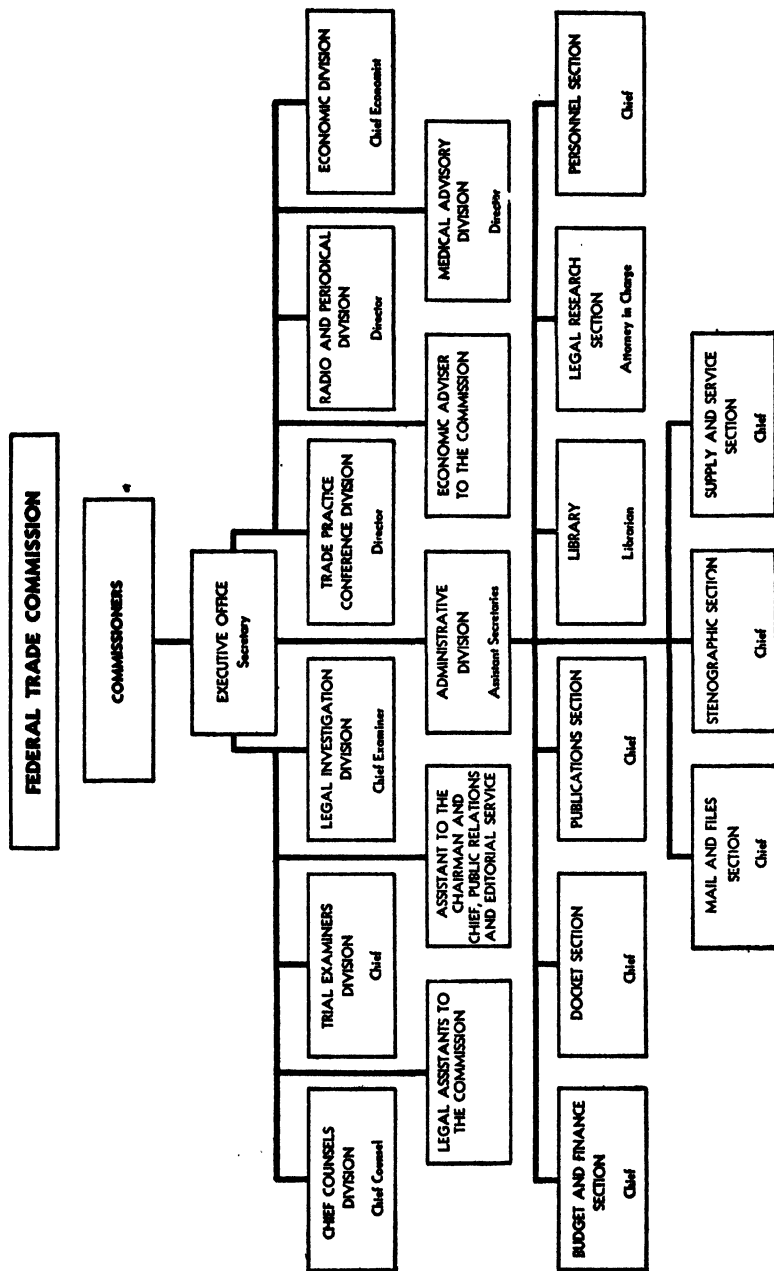


FIG. 3. An example of an independent establishment with a multiple head. Reproduced from the *United States Government Manual*.

or executive orders, leaving the actual routine as well as the determination of detailed policies to the administrative agencies.

The older administrative departments are entrusted with many powers pertaining to the general operation of government. Thus the Treasury Department collects taxes, borrows money, provides currency, takes care of public funds, and pays out claims against the Federal government as it is authorized to do by general law or by appropriation act. The newer agencies may have direct authority to operate in a given area, but some of them can wield only those powers which arise from the device known as "grants-in-aid." In other words, in carrying out the powers expressly granted by the Constitution Congress uses the administrative departments as agents for regulating interstate commerce, supervising naturalization, and preparing for national defense. However, Congress, pointing out the popular demand for federal activity in social security, public health, education, and road building, has not been satisfied with its enumerated powers. But not having the power to enter these fields directly, Congress has appropriated large sums of money to be used in assisting those states which will meet the standards which it sets up. The Federal Security Agency is perhaps the best example of an administrative establishment which has little absolute power,¹ yet exerts very great influence through the disbursement of grants-in-aid to states which cooperate with it. For example, it cannot possibly compel a state to set up an old-age pension system, dependent children's benefits, or a program of pensions for the blind. Nevertheless, the money which it controls—hundreds of millions of dollars every year—is sufficient to persuade the states to adopt these programs and to follow minimum standards which it specifies.

Another type of authority is purely advisory in character. For example, Congress appropriates money to enable the Office of Education to carry on research in the field of public education and to publish the results of its investigations. This office cannot compel school authorities to pay any attention to what it regards as desirable—it can only hope that its conclusions will be sufficiently impressive to lead to some action.

Still another type of power may be designated "managerial." Increasingly during recent years Congress has set up government corpora-

¹ This agency does have extensive authority over the old-age insurance program which is not based on the states.

tions which may be expected to deal with agricultural surpluses, credit, or insurance very much as a private business would. The Surplus Marketing Administration purchases surplus food supplies which it distributes among the needy; the Reconstruction Finance Corporation loans money to local governments, foreign governments, and private corporations; the Federal Deposit Insurance Corporation insures the deposits of all national banks and many state banks which wish to avail themselves of its services. The Tennessee Valley Authority and the Panama Canal manage great public works which are not unlike private enterprises.

Finally, there are several administrative agencies which perform duties which are semijudicial in character. The Federal Trade Commission hears evidence and explanations in regard to unfair business practices and finally decides whether or not there is sufficient proof of charges to issue an order to "cease and desist" from engaging in them further. The Federal Communications Commission and the Interstate Commerce Commission both sit in a quasi-judicial capacity in connection with radio broadcasting, interstate telephone and telegraph lines, and interstate railroads and buses. Not all of the functions of these commissions will be quasi-judicial by any means, for they also investigate and enforce. However, the quasi-judicial duties are at times so important that they overshadow the other functions.

ADMINISTRATIVE REORGANIZATION

The administrative system of the Federal government had become so top-heavy by 1930 that widespread alarm was expressed by thoughtful citizens. Congress had added a bit here and a bit there, never bothering to overhaul thoroughly and to integrate, until a truly fantastic structure had been erected, reminding one somewhat of the pueblos of the Southwest or the castles described in fairy tales. About this time a member of Congress, and a man who spoke with authority as a lawyer, took some time from his busy life to write a book which he called *Our Wonderland of Bureaucracy*.¹ He asserted that our very political foundations were in danger of being swept away by the irresponsible and capricious quasi-legislative and quasi-judicial rulings of the most powerful commissions, even going so far as to foresee the withering away of the legislative branch to be supplanted by complete

¹ This was published in 1932 and had a wide circulation. The author was James M. Beck.

and tyrannical administrative domination. The elaborate program of the New Deal not only did not help to bring order out of what almost amounted to chaos, but it added numerous other agencies to what some people regarded as an already tottering edifice.

In addition to the general criticisms which have been noted above, several specific charges were leveled at the national administrative system as it existed prior to 1939. Perhaps the most telling of these was the one which pointed out how utterly impossible it was for any President to keep his eye on so variegated and unintegrated a setup. Under the Constitution the chief executive is charged with responsibility for supervising the executive and administrative departments; certainly it is exceedingly desirable to have some one ultimately responsible for what the departments do. Yet although the President was nominally at the head of the system, it was humanly impossible for him to do more than keep a weather eye out for abuses. In the second place, such a top-heavy structure was more or less inefficient. Half a dozen agencies might be working on different phases of the same problem and no one of them desired to assume or was assigned final responsibility. One agency repeated what had already been done by another; another attempted to bring about the very opposite end being sought by a fourth. As Secretary of Commerce Mr. Hoover discovered that forty different agencies in Washington and thirty-four in the field purchased supplies for the Federal government; that fourteen different divisions of six departments interested themselves in the merchant marine; that eight agencies in five departments sought to further conservation of resources; and that fourteen sections of nine different departments undertook the construction of public works.¹ Moreover, boards were charged with handling duties that virtually all experts in public administration agree should be placed under a single head if prompt and decisive action is to be expected. Finally, large numbers of critics waxed eloquent about the economic wastefulness of a system that would permit duplication, red tape, working at cross-purposes, and long delay. Extreme enthusiasts believed that a large part of the cost of the government could be saved without decreasing the efficiency of the services rendered if the system were more adequately organized. And even more cautious persons agreed that substantial savings could be effected.

¹ Quoted from F. A. Ogg and P. O. Ray, *Introduction to American Government*, rev. ed., D. Appleton-Century Company, Inc., New York, 1938, p. 282.

As far back as the first decade of the century President Taft appointed a commission to investigate the problem of governmental efficiency. This commission took its task seriously and made a report which might well have received serious attention. Woodrow Wilson was too burdened with war problems to give much time to reorganization, but he did exhibit interest in the problem. Herbert Hoover had given a great deal of thought to the overlapping and the irresponsibility of the many agencies, even going so far as to make a survey of the extent of duplication. As an engineer and a man of affairs Mr. Hoover had a flair for organization and finally persuaded Congress to grant him authority to reconstruct the system subject to congressional approval. Acting under this permission he undertook an extensive rearrangement and consolidation of administrative agencies, but a Democratic Congress refused to approve of any of the changes which he had worked out. Hence, despite all of the interest on the part of Presidents, the criticism of thousands of citizens, and the proposals looking toward improvement, very little was accomplished prior to 1933. The agencies themselves were not anxious to be regimented; public employees feared that their jobs might be swept away by a reorganization; politicians wanted nothing that would make it more difficult to use the government for their own interests; the states foresaw an expansion of federal power; and Congress was unable to agree as to what steps would prove advantageous.

**Early
Efforts Un-
successful**

One of the last pieces of legislation signed by President Hoover was a bill which gave Franklin D. Roosevelt power to do what no predecessor had dared hope for. For two years the chief executive was to have an almost free hand in remodeling the administrative setup, with the provisos that the ten major departments must be retained and that orders carrying out changes should not go into effect until they had rested before Congress for sixty days. The President was occupied with the problems presented by the worst depression in American history during the two-year period allowed for this reconstruction. He found some time to give to reorganization and issued numerous orders which Congress accepted. But while he was with one hand consolidating and integrating, with the other he was adding more rapidly new agencies which could not be fitted into any orderly system. Therefore, the best opportunity which an American chief executive had ever had produced nothing like the benefits which had been anticipated. Some important changes were

**The First
Roosevelt
Reorgani-
zation**

made, but they were not far-reaching enough in character to effect any general reorganization.

The addition of the New Deal alphabetical agencies to the administrative system, bringing the total number to approximately one hundred, generated adverse criticism among those who had expected Franklin D. Roosevelt to achieve reform in government. These new agencies were neither placed under the merit system nor otherwise brought into well-defined relationship with the older departments. Public opinion encouraged some of the more independent congressmen, including Senator Byrd of Virginia, to train their guns on the President and threaten a congressional investigation. Not to be caught sleeping, Mr. Roosevelt in 1936 appointed a President's Committee on Administrative Management to examine the problem and recommend what, if anything, should be done to deal with it. Louis Brownlow, Charles E. Merriam, and Luther Gulick, all men of rich experience and wide acquaintance with the principles of public administration, recruited a staff of recognized experts to assist them in making the most searching study which has thus far been made of the federal administrative machine. Their recommendations were warmly welcomed and almost universally praised when they were made public in 1937.¹ Some thoughtful students doubted the wisdom of their suggestion to substitute a single civil service administrator for the existing three-man commission and there was some question raised about the extent to which the report went in urging the inclusion of the quasi-judicial commissions under the major departments, but these objections were comparatively minor. The committee proposed twelve major departments: nine of the existing ones, the Department of Interior to be renamed the "Department of Conservation," and two new departments to be known as "Social Welfare" and "Public Works." They urged that the independent establishments be consolidated with these departments or, in the case of quasi-judicial agencies, attached to them. And they suggested that the merit system of public employment be expanded to include all non-policy performing positions; that a permanent central planning agency be established in the office of the President; and that the matter of proper administrative organization be given regular rather than sporadic attention.

¹ This report was published by the Government Printing Office in 1937 under the title *Administrative Management in the Government of the United States*. Supplementary studies were also published.

Had a bill embodying the recommendations of this committee been submitted to Congress promptly there is reason to believe that it would have been passed without substantial amendment. However, the President was more interested in other matters and consequently allowed the report to remain on his desk for several months. In the meantime he sent to the Congress his court reorganization bill which stirred up a tempest such as has rarely been observed in the Capitol.¹ Having broken its fetters which had for several years subordinated it to the executive, Congress was in a mood for additional rebellion and saw that opportunity in the administrative reorganization bill. Nevertheless, it was commonly predicted that the bill would finally be accepted by Congress, perhaps with reasonable modifications. But interested observers had not reckoned with Father Coughlin who, on the Sunday before the bill came to a vote in the Senate after passage in the House of Representatives, told his radio listeners that they could save their country by flooding Washington with telegrams protesting against the bill.

Delay in
Transmit-
ting Report
to Congress

After refusing to accept the original reorganization bill, the Senate proceeded to have the Brookings Institution prepare a study on administrative reorganization.² This report agreed with some of the recommendations of the earlier committee, but it challenged some of the conclusions of the earlier report in regard to the Civil Service Commission and the quasi-judicial commissions. Finally, in 1939 a reorganization bill was passed which authorized the chief executive up to July 1, 1940 to "reduce, coordinate, consolidate, and reorganize" within defined limits, subject to the veto by a concurrent resolution of both houses. This bill did not authorize any increase in the number of major departments nor even a change in their names. It also placed fifteen of the independent establishments beyond the power of the President to touch.

The Reor-
ganization
Bill of 1939

Acting under the authority conferred on him by the 1939 act, Franklin D. Roosevelt drafted five reorganization plans during 1939 and 1940 which were approved by Congress. Plans 1 and 2 which became effective on July 1, 1939, provided for the establishment of three agencies which in many respects rank with the ten major de-

¹ See Chap. 22.

² Additional discussion of this report is available in L. M. Short, "An Investigation of the Executive Agencies of the United States Government," *American Political Science Review*, Vol. XXXIII, pp. 60-66, February, 1939.

partments: the Federal Security Agency, the Federal Works Agency, and Federal Loan Agency.¹ Widely scattered divisions of the government were brought together into these three reasonably integrated major agencies. The Federal Security Agency, for example, drew the Office of Education from the Interior Department, the Public Health Service and the American Printing House for the Blind from the Treasury, the United States Film Service and Radio Division from the National Emergency Council, the United States Employment Service from the Labor Department, and the Social Security Board and the Civilian Conservation Corps from independent establishments. The changes in the ten departments were much less significant, though some nineteen agencies were transferred from independent status or moved from department to department. The Bureau of the Budget, the Central Statistical Board, the National Resources Planning Board, and the National Emergency Council² were placed in the executive office of the President.

Plan No. 3 related to the Treasury, Interior, Agriculture, and Labor departments and brought about only minor changes except that it combined ten divisions of the Treasury Department into a large Fiscal Service to be headed by an assistant secretary and composed of three sections: Office of the Treasurer of the United States, Bureau of Accounts, and Bureau of Public Debt. Plan 4 was even less important, doing little of more than detailed consequence except perhaps the shift of the Weather Bureau to the Department of Commerce, the establishment of a Civil Aeronautics Board in the same department, and the transfer of the Food and Drug Administration from Agriculture to the Federal Security Agency. The final plan, effective on May 22, 1940, provided only for the moving of the Immigration and Naturalization Service from Labor to the Justice Department.³

The net result of the reorganization which the chief executive effected under the act expiring in July, 1940 is now reasonably apparent. The establishment of the three great agencies dealing with federal security, public works, and federal loans was certainly of far-reaching importance, although it may be unfortunate

¹ For Plans 1 and 2, see *United States Statutes-at-Large*, Seventy-sixth Congress, first session, Vol. LIII, part 2.

² In the case of the National Emergency Council a new title "Office of Government Reports" was conferred.

³ See the *Federal Register* of April 11, May 22, and June 2, 1940 for Plans 3, 4, and 5.

THE PRESIDENT'S REORGANIZATION PLANS 1 AND 2

EFFECTIVE JULY 1, 1939

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF BUDGET (Treasury)
 CENTRAL STATISTICAL BOARD (Independent)
 CENTRAL STATISTICAL COMMITTEE* (Independent)
 ① NATIONAL RESOURCES PLANNING BOARD (Independent)
 FEDERAL EMPLOYMENT STABILIZATION OFFICE* (Commerce)
 ② NATIONAL EMERGENCY COUNCIL* (Independent)

STATE DEPARTMENT

FOREIGN COMMERCE SERVICE (Commerce)
 FOREIGN AGRICULTURE SERVICE (Agriculture)
 FOREIGN SERVICE BUILDINGS COMMISSION (Independent)

TREASURY DEPARTMENT

BUREAU OF LIGHTHOUSES (Commerce)
 WAR FINANCE CORPORATION* (Independent)
 DIRECTOR GENERAL OF RAILROADS* (Independent)

INTERIOR DEPARTMENT

BUREAU OF FISHERIES (Commerce)
 BUREAU OF INSULAR AFFAIRS (War)
 BUREAU OF BIOLOGICAL SURVEY (Agriculture)
 ③ NATIONAL BITUMINOUS COAL COMMISSION* (Independent)
 CONSUMERS' COUNSEL OF N B C C* (Independent)
 MT. RUSHMORE NATIONAL MEMORIAL COMMISSION (Independent)

AGRICULTURE DEPARTMENT

FARM CREDIT ADMINISTRATION (Independent)
 FEDERAL FARM MORTGAGE CORPORATION (Independent)
 COMMODITY CREDIT CORPORATION (Independent)
 RURAL ELECTRIFICATION ADMINISTRATION (Independent)

COMMERCE DEPARTMENT

INLAND WATERWAYS CORPORATION (War)

JUSTICE DEPARTMENT

FEDERAL PRISON INDUSTRIES INC. (Independent)
 NATIONAL TRAINING SCHOOL FOR BOYS (Independent)

FEDERAL SECURITY AGENCY

OFFICE OF EDUCATION (Interior)
 U.S. FILM SERVICE (National Emergency Council)
 RADIO DIVISION (National Emergency Council)
 PUBLIC HEALTH SERVICE (Treasury)
 SOCIAL SECURITY BOARD (Independent)
 U.S. EMPLOYMENT SERVICE (Labor)
 NATIONAL YOUTH ADMINISTRATION (Independent)
 CIVILIAN CONSERVATION CORPS (Independent)
 AMERICAN PRINTING HOUSE FOR THE BLIND (Treasury)

NATIONAL ARCHIVES

CODIFICATION BOARD* (Independent)

FEDERAL WORKS AGENCY

④ PUBLIC ROADS ADMINISTRATION (Agriculture)
 PUBLIC WORKS ADMINISTRATION (Independent)
 ⑤ WORK PROJECTS ADMINISTRATION (Independent)
 UNITED STATES HOUSING AUTHORITY (Interior)
 ⑥ PUBLIC BUILDINGS ADMINISTRATION

FEDERAL LOAN AGENCY

RECONSTRUCTION FINANCE CORPORATION (Independent)
 RFC MORTGAGE COMPANY (Independent)
 DISASTER LOAN CORPORATION (Independent)
 ELECTRIC HOME AND FARM AUTHORITY (Independent)
 FEDERAL NATIONAL MORTGAGE ASSOCIATION (Independent)
 EXPORT-IMPORT BANK OF WASHINGTON (Independent)
 FEDERAL HOUSING ADMINISTRATION (Independent)
 FEDERAL HOME LOAN BANK BOARD (Independent)
 HOME OWNERS' LOAN CORPORATION (FHLBB)
 FEDERAL SAVINGS & LOAN INSURANCE CORP. (FHLBB)

NOTES

- BRACKETS INDICATE FORMER STATUS OF AGENCIES.
 * FUNCTIONS TRANSFERRED AS SHOWN, OFFICE ABOLISHED.
 ① FORMERLY CALLED NATIONAL RESOURCES COMMITTEE.
 ② NOW CALLED OFFICE OF GOVERNMENT REPORTS.
 ③ NOW CALLED BITUMINOUS COAL DIVISION.
 ④ FORMERLY CALLED BUREAU OF PUBLIC ROADS.
 ⑤ FORMERLY CALLED WORKS PROGRESS ADMINISTRATION.
 ⑥ COMPOSED OF PUBLIC BUILDINGS BRANCH (Treasury), AND BUILDING MANAGEMENT BRANCH (Interior).

FIG. 4. Prepared by the United States Information Service.

that it was not possible to put them fully on a par with the ten major departments. Some of the other changes have resulted in controversy between Mr. Ickes and his associates, but in general they seem wise. The total number of administrative agencies has been reduced considerably below the approximately one hundred reported by the Committee on Administrative Management, although it is still larger than might be desirable. However, the inability of the President to touch the fifteen most powerful independent establishments prevented seemingly logical shifts and rearrangements. Hence reorganization remained on the list of the important problems of the national government.

Shortly after the United States found herself at war with Japan, Germany, and Italy, Congress authorized the President to make such reorganization of the administrative structure as would contribute to national defense.¹ Almost at once President Roosevelt issued executive orders which were aimed at important changes. To begin with, the Federal Loan Agency was abolished, many of its parts, including the Reconstruction Finance Corporation, being transferred to the Department of Commerce. Then a new National Housing Agency was created to assume responsibility for the work of some sixteen bureaus of the federal government which had been attempting to deal with various aspects of housing.² At about the same time the chief executive grouped seventeen bureaus and administrations of the Department of Agriculture into four large divisions.³ Most important of all, the White House announced in February, 1942, a sweeping reorganization of the War Department which brought the many subdivisions of that agency under three great services that would handle ground operations, air warfare, and supplies.⁴

¹ This authority was granted during the period of the war and for six months thereafter.

² The National Housing Administration was assigned housing functions that had previously been handled by the following: United States Housing Authority, Federal Housing Administration, Federal Home Loan Board, Federal Home Loan Bank System, Federal Savings and Loan Association, Home Owners' Loan Corporation, Defense Homes Corporation, Farm Security Administration, Public Buildings Administration, Division of Defense Housing and Mutual Ownership, Defense Housing Division of the Federal Works Agency, the Division of Defense Coordination, and the Army and Navy except for building on military reservations.

³ These divisions were as follows: Agricultural Marketing Administration, Bureau of Agricultural Economics, Agricultural Conservation and Adjustment Administration, and Agricultural Research Administration.

⁴ For additional discussion of this reorganization, see Chap. 35.

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CHAPTER XXIV

PUBLIC PERSONNEL ADMINISTRATION

THE striking expansion of the administrative side of government has had many effects, not the least of which is the accentuation of the problem of adequate public personnel. Under the type of government which characterized the United States during its first century, the need for large numbers of public employees was not entirely lacking, but it was certainly far less apparent than has been the case recently. The national government started out in 1789 with approximately three hundred civil servants.¹ In the centennial year it gave civil employment to slightly more than 150,000 persons,² while during 1941 the corresponding figure passed the 1,500,000 mark³—almost a tenfold enlargement in approximately fifty years! But spectacular as the increase in numbers has been, figures do not begin to tell the whole story, for the new emphasis upon administration has required far more specialized training and expertness from civil servants as well as greater numbers of them. As long as the national government confined itself to the collection and disbursement of tax money, the carrying of mail, the keeping of records, and related functions, it was possible, although not very satisfactory, to entrust the work to persons whose principal qualification was political influence. The newer activities of the federal agencies make use of numerous clerks, copyists, messengers, and routine assistants also, but in addition they require engineers, public health doctors, social workers, agronomists, tax experts, lawyers, and a galaxy of other highly trained technicians. The net result has, of course, been a notable intensification of the problem of public personnel administration.

Even though there has been a distinct long-run tendency to add more and more names to the federal pay roll, the rate of increase has not been constant. Indeed there have been periods when for several years large numbers of positions have been stricken from the list.

¹ When the government moved to Washington from Philadelphia in 1800, only fifty-four clerks had to be moved.

² The exact number was 159,356.

³ There were 1,512,128 civil employees as of October 31, 1941.

During national emergencies induced either by internal or international situations the number of federal civil servants ordinarily goes up by leaps and bounds because of the elaborate programs devised to cope with new problems. Then as normal times again return, there is usually a strong sentiment to curtail the staffs of even those services of the government which are not primarily related to the emergency. Thus, in 1916 the civil employees of the national government totaled 438,057, while at the height of the war preparations more than twice that number, 917,760, were reported. Almost immediately after the armistice in 1918 a drastic reduction was begun which cut the pay roll to approximately six hundred thousand, where it remained until the economic crisis following 1929 again pushed the government into new fields. The number of federal employees then started increasing, until it passed the nine hundred thousand mark in 1939.¹ Instead of shrinking as it might have done had the international situation maintained its equilibrium, the pay roll continued to expand as a result of the national defense program. Thousands of new employees were recruited every month; new civil service examinations were announced every few days; and the demand for trained mechanics was so great that examinations were given upon application at any time. By the end of 1941 more than a million and a half civil employees² were working for the national government! Since slightly over fifty million persons were employed in every paid capacity at that time, those figures indicate that something like one out of every thirty workers labored for the national government in Washington or the field.³ The record becomes even more impressive if one adds the some three and one-quarter million employees of the state and local governments—which must be done if a comparison is made with foreign governments of the unitary type.⁴

¹ On July 1, 1939, the beginning of a new fiscal year, the exact number was 925,982.

² Early in January, 1942, Commissioner A. S. Flemming, speaking to the Association of American Colleges and Allied Associations meeting in Baltimore, declared that this number might increase by another million before the war was over.

³ There is a common impression that most federal employees reside in Washington, but actually scarcely more than 10 per cent were located there in 1941. The remainder are scattered over the country, with concentrations in such cities as Chicago, San Francisco, Boston, New York, and Denver. The national defense program made it necessary to move certain agencies away from Washington. Thus in December, 1941, President Roosevelt shifted about ten thousand employees of S.E.C., R.E.A., F.S.C., S.S.B., R.R.B., Patent Office, and so forth, to Philadelphia, New York, Chicago, St. Louis, Pittsburgh, and Richmond.

⁴ As of January 1, 1941, there were 3,242,000 state and local employees. See United States Bureau of the Census, *Public Employment in the United States: 1941*, Government Printing Office, Washington, 1941, p. 4.

THE SPOILS SYSTEM IN FEDERAL EMPLOYMENT

The beginning years of the new government saw a remarkable succession of able Presidents. It would not be accurate to say that there was no disposition to make appointments to federal positions on other than a merit basis, but even so the general record was high.¹ President Washington started out by prescribing superior standards and he was more or less faithfully followed by Adams, Madison, Monroe, and John Quincy Adams. Jefferson's record in this matter was not too good, for he removed about one-fourth of the Federalists who held positions over which he had control. On the other hand, it must be remembered that he came in as the first representative of an opposing party. Altogether Professors Mosher and Kingsley are of the opinion that these years warrant the appellation "The Period of Administrative Efficiency" ²

Early
Years:
1789-1829

If the early period can be regarded as reasonably free from vicious political influences, that can scarcely be said of the years 1829 to 1865. Perhaps too much onus has been placed upon the shoulders of Andrew Jackson and his immediate successors in the presidency, but it cannot be disputed that they fell far below Washington in their insistence upon qualified public servants. Jackson is identified in the minds of many people with that famous epigram: "To the victors belong the spoils."³ In his first message to Congress President Jackson expressed his sentiments on official competence in the following words: "The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance; and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience." Professors Mosher and Kingsley characterize these years as "The Period of Unmitigated Spoils."⁴

The Period
1829-1865

¹ For a good discussion of the place of spoils in American history, see C. J. Friedrich, "The Rise and Decline of the Spoils Tradition," *Annals of American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 10-17, January, 1937.

² See their *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941, p. 17.

³ Actually this statement was made by Senator William Marcy of New York, but it has been popularly attributed to Jackson himself because it is such a succinct statement of his point of view.

⁴ *Ibid.*, p. 17.

Following the Civil War public opinion began to question some of the extreme practices associated with the spoils system. Examinations were used by some of the more progressive departments for the selection of employees; restrictions were placed upon assessment of federal employees for political party campaign funds; and there was a beginning made in regulating the partisan activity of government servants. The assassination of President Garfield by a disappointed office seeker served to arouse public opinion from its lethargy and focused it, as perhaps never before, on the evils inherent in the spoils system.

The popular disgust with the spoils method of disposing of federal positions led to the passage of the Pendleton Act in 1883. Although this placed only approximately 10 per cent of the positions of the executive civil service on a merit basis,¹ it did start a precedent which has gained more and more weight, despite congressional reluctance and political machine opposition. During the succeeding half century the proportion of public positions filled under the merit system gradually increased, until in 1932 it reached a high water mark of 81.82 per cent.² Then came the establishment of the multiplicity of New Deal alphabetical agencies, which for the most part were staffed with spoils protégés. From slightly over one hundred thousand the number of civil positions not subject to the Civil Service Commission increased to approximately four hundred thousand and the proportion of spoils positions jumped from less than 20 per cent to something like 40 per cent. For several years there was much gloom in the circles of merit-system advocates, for the ground that had been painfully gained seemed to be dropping away alarmingly. There were predictions of a most ghastly future, but their authors were confounded by the events of 1939-1941 which again restored the earlier proportion of approximately eight out of ten.

In comparison with England, which prior to the outbreak of the war³ placed all nonpolicy-determining civil positions under the merit system, the record in the United States is not too impressive, despite the ground that has been regained since 1938. The appointment of the collectors of internal revenue, the customs collectors, the district

¹ At this time 13,780 positions out of 131,208 were in such a category.

² At this time 477,161 out of 583,196 were subject to examination.

³ New appointments in England to emergency positions were not made under the ordinary civil service. This led to serious criticism. See section by Eugene P. Chase in *Government in Wartime Europe*, Reynal & Hitchcock, Inc., New York, 1941.

attorneys, the federal marshals, and others to a total number of perhaps two hundred odd thousand under noncompetitive arrangements leaves a big gap. Not all of these positions, however, go to unqualified persons; as a matter of fact, it is claimed that some of them are given to persons better qualified than the rank and file of the so-called "merit" employees.¹ Nevertheless, political considerations do play a large role in filling many of these exempt positions and may, as far as the law is concerned, be all important. More than that, some of the places which are nominally under the merit plan are actually in large measure subject to the spoils system. First-, second-, and third-class postmasters, for example, are examined by the Civil Service Commission, but the nature of the examinations and the role of the dominant party in determining the appointments makes it very questionable whether the spoils system has been displaced.

Current
Status of
Spoils in
Public Em-
ployment

The exact status of the spoils system at present is difficult to ascertain. Some positions are theoretically under a merit plan, but still they do not seem to receive adequately qualified incumbents. Others are exempted by law from the general competitive system, but in reality many good appointments are made. Politicians allege that the bureaucrats have been so clever in manipulating the civil service machinery that there has arisen a new and more vicious spoils system, based on personal rather than party politics. The picture is, of course, exceedingly complicated; however, in general, there is a feeling among competent observers that public personnel administration is now distinctly superior in standards to the level of the nineteenth century. The present federal system may not represent an all-time high, but it is at least reasonably satisfactory and definitely superior to state and local practices.

There is much difference of opinion as to whether it is feasible to go further in substituting merit for spoils in federal employment. The President's Committee on Administrative Management recommended the merit plan for all nonpolicy determining positions, apparently on the supposition that the United States could follow the English example. In an opposing camp are those politicians, journalists, and even scholars who maintain that the American form of government necessitates the spoils system and that no further cur-

The Future
of Spoils

¹ The Tennessee Valley Authority, for example, has an elaborate personnel system which it considers superior to the Civil Service Commission setup.

tailment is desirable. These latter gentry argue that there is no formal leadership provided under our Constitution, that there must as a matter of fact be leadership, and that the main way that the President can gain the cooperation of Congress is through the use of the spoils which are at his disposal.

THE RISE OF THE MERIT SYSTEM

The discussion in the preceding section presents a background for a consideration of the rise of the merit system of public employment in the United States since the curtailment of the spoils arrangement has not only been accompanied but largely effected by the establishment of merit machinery.

Foreign students are frequently amazed by the leisurely growth of the merit system in the United States. The Pendleton Act of 1883, **Gradual Character** despite publicity as a drastic reform, covered only 13,780 positions, or just 10 per cent of the total field. The Civil Service Commission, for which it provided, received the most niggardly appropriations and was regarded with extreme suspicion by members of Congress, heads of departments, and the political fraternity in general. Theodore Roosevelt relates in his *Autobiography* some of the tribulations which the early members of the commission had to bear. With his usual impatience Mr. Roosevelt was not anxious to shoulder the most irritating of these slights and boldly challenged the members of Congress to a political duel. As civil service commissioner he was not willing to hold examinations in those states whose Senators and Representatives refused reasonable appropriations for that agency. When candidates from such states inquired why examinations were not given, Mr. Roosevelt courteously informed them that the funds of the commission were not sufficient to give examinations throughout the country and that it seemed only fair to limit the examinations to states whose congressmen had supported more generous appropriations. The multitude of disappointed candidates forthwith proceeded to barrage their Senators and Representatives with complaints until, much as they resented it, these congressmen were forced to increase the allowance of the Civil Service Commission. Ten years after the new system went into effect just over one-fourth of the federal positions were subject to it; twenty years saw 51.19 per cent placed under its jurisdiction. By 1914 the proportion had passed the two-thirds

mark ¹ and in 1924 it almost reached the three-fourths level.² In 1932 an all-time high of 81.82 per cent was achieved, but this slipped back rapidly until in 1937 just over 60 per cent of the civil positions were subject to the Civil Service Commission.³

Although Franklin D. Roosevelt had long been interested in civil service reform and for several years after graduation from Harvard had made such reform almost his sole profession, the first years of his presidency saw the merit system thrown back something like a quarter of a century. The Recession of 1933-1938 Indeed critics charged that no President of the twentieth century had done so much to wreck merit in public employment! The report of the President's Committee on Administrative Management, as we have pointed out, recommended the extension of the merit method of recruitment to all positions in the federal service with the exception of those few whose holders fixed policies. Nevertheless, Congress paid little attention to this section of the report and the merit system gained no ground as a result of the Reorganization Act of 1939. In the meantime, Mr. Roosevelt, stung by the caustic comments of his critics or realizing how badly he had neglected his old-time love, began to display signs of a renewed sense of responsibility. As early as 1936 he issued an executive order which provided that first-, second-, and third-class postmasters should be placed under competitive examination administered by the Civil Service Commission. Following that, a series of executive orders placed all civil positions not expressly exempted by law ⁴ from the merit system under the Civil Service Commission.

Nevertheless, despite all of the favorable action by the President, between three and four hundred thousand federal positions remained outside of the merit system in 1940.⁵ Not all of these were on a distinct spoils basis inasmuch as there was a tendency for departments to set up their own examinations when it became apparent that Mr. Roosevelt was again supporting merit reform. But still there was a widespread feeling that the large number The Ramspeck Act of 1940

¹ A total of 292,460 out of 435,000 positions, or 67.23 per cent, were subject to examination in that year.

² To be exact, 74.80 per cent of the positions were under the merit system.

³ In 1937 about 64 per cent of the federal positions were under the Civil Service Commission.

⁴ In setting up the New Deal agencies Congress had expressly provided in many cases that the merit system should not be applied.

⁵ On June 30, 1941, 367,932 positions were in this category. Letter from A. S. Flemming, Civil Service Commissioner, dated January 7, 1942.

of offices expressly exempted from the regular personnel system constituted a menace to the maintenance of high standards. Even where agencies voluntarily used competitive examinations, there was no guarantee of permanence; nor was any very adequate means provided to assure the public that more than lip service was being paid to the merit principles. In 1939 Representative Ramspeck of Georgia introduced a bill which aimed at the extension of the formal merit system to the New Deal agencies which were by law placed outside of its operation. The bill was not welcomed by large numbers of congressmen—as a matter of fact it was pigeonholed for months by the committee to which it was referred. In the meantime public pressure became intensified, President Roosevelt furnished support, and Congress slowly and reluctantly brought the bill out where it could be discussed. It was, perhaps, too much to expect that all positions would be transferred from spoils to merit at a single fell swoop.¹ Amendments reduced the scope of the bill and as finally passed in December, 1940, it left between two and three hundred thousand positions outside of the jurisdiction of the Civil Service Commission.² Such important agencies as W.P.A. and T.V.A., for example, were by amendment expressly excluded. Nevertheless, this act represented a very notable step forward and together with the war recruitment policy based on the merit principle had the effect of again raising the proportion of federal positions under the formal merit principle to approximately 80 per cent.³

After he had again become interested, Franklin D. Roosevelt gave the federal personnel problem a generous amount of attention. Among other steps, he appointed a Committee on Civil Service Improvement, headed by Justice Reed and composed of several other Supreme Court justices and distinguished members of the bar, to investigate the recruitment of professional members of the civil service, especially lawyers. With Professor Leonard D. White as

¹ The Ramspeck Act provided that qualifying examinations should be given to those already in possession of the jobs which were included under the act. Incumbents who made a grade of 70 on the noncompetitive examination would be permitted to retain their positions.

² The Act became effective on January 1, 1942, and added "well over 100,000 positions to the competitive class," according to Commissioner A. S. Flemming in a letter to the author.

³ As of June 30, 1941, 73 per cent of the civil employees were under the merit system. This is the latest official figure, but Commissioner Flemming in the letter noted above, dated January 7, 1942, states: "I am certain that the number is now well above 80 per cent."

its research director, it carried on an unusually searching investigation of the role of the technician in the federal agencies and finally reported to the President in 1941. The committee was not able to agree unanimously; however, the majority expressed the opinion that lawyers should also be brought under the regular personnel machinery. On April 25, 1941, the President issued an executive order ¹ which was to become effective on January 1, 1942, carrying out the recommendations of the Reed Committee. A board of legal examiners consisting of the Solicitor General, the chief legal officer of the Civil Service Commission, and nine men ² to be appointed by the President was set up in the Civil Service Commission. This board was given authority to determine procedures and frame noncompetitive examinations for federal attorneys.

The future growth of the merit system depends largely upon formal action taken by Congress, although some discretion is given to the President to issue executive orders bringing hitherto exempt positions under the Civil Service Commission. Congressmen ^{Future Growth} have long looked with suspicion upon the whittling away of their patronage, although they sometimes shed crocodile tears and beg for sympathy in their intolerable task of picking one fortunate recipient from a field of clamorous seekers.³ Since there is considerable difference of opinion as to how much farther Congress may be expected to go in this direction, the future growth of the merit system in public employment is problematical.

THE CIVIL SERVICE COMMISSION

Few government agencies are as diversely viewed by the rank and file of the people as the Civil Service Commission. Some enthusiasts regard it as the very palladium of the Federal governmental structure, while carping critics charge it with the most monstrous practices. There is also a widespread belief that the Civil Service Commission has the power to make appointments to public positions, although actually it makes appointments only to its own staff.

From its inception more than half a century ago ⁴ the Civil Service

¹ See the *Federal Register*, April 25, 1941, for the terms of this order.

² These nine men are to be drawn as follows: five from chief law offices of executive departments, two from law faculties, and two from practicing attorneys.

³ Congressmen have sometimes said that they make ninety-nine enemies for every friend they gain as a result of appointments, but they still want to make the appointment, judging from their reluctance to accept a substitute arrangement.

⁴ It was created in 1883 by the Pendleton Act.

Commission has consisted of three members, not more than two of whom may be members of a single political party. They are appointed to their positions by the President with the consent of the Senate and are considered full-time employees of the government at salaries of \$10,000 each per year. The President's Committee on Administrative Management suggested a drastic change in its organization—the substitution of a single director or administrator and the creation of a fairly large advisory council made up of personnel experts drawn from business corporations, universities, and elsewhere. Although this recommendation was in keeping with the approved principles of public administration, many people felt that the time was not ripe for major changes because they feared that, despite the qualifications specified for the single administrator, political considerations would somehow or other enter into the choice. The bipartisan character of the commission does sometimes lead to compromise and a lack of decisive action; but, admitting that, the critics of the proposal felt that it was preferable to domination by a single political party. The opposition to the change was sufficiently vigorous to prevent its adoption.

There has been a considerable variation in the qualifications of the persons appointed as commissioners. A few have been well known before they entered the service of the government;¹ a few others have achieved eminence as members of the commission;² but, in general, the ordinary citizen cannot even name the civil service commissioners. Their work is not carried out in the glare of a spotlight; no political future is opened by service on the commission; and the duties are somewhat too routine to attract the man of affairs. Nevertheless, it would not be fair to conclude that the caliber of the members is entirely unimpressive. Unfortunately there is reason to believe that some of the commissioners have had very little to contribute, but others have in a quiet way done a great deal.³

Examination of the Civil Service Commission over its more than half-century of existence makes the conclusion difficult to escape that it has suffered from chronic malnutrition. In comparison with other less important agencies of the Federal government it has had to get along on niggardly appropriations and operate with a

¹ Theodore Roosevelt may be cited here.

² Arthur S. Flemming, one of the 1941 commissioners, was comparatively unknown before taking office, but he has achieved considerable prominence because of his emphasis on cutting red tape, reducing delay, and meeting national emergency requirements.

³ Leonard D. White is a good example of a very valuable member of the commission.

pathetically small staff. Even its office space has been scarcely adequate. The revived interest in the merit system has, among other things, made it possible to remedy this situation to a considerable extent. Since 1939 the staff of the commission has increased by more than 100 per cent; a building vacated by another agency has been turned over for its use; and appropriations have become appreciably larger. It is not necessary to deal in detail with the subdivisions of the commission beyond saying that there is a breakdown along functional lines. In Washington there are the following divisions and boards: Editing and Recruiting Division, Examining Division which includes sections on applications and certification, Investigations Division, Research Division, Service Record and Retirement Division, Correspondence Division, Medical Division, Training Division, Personnel Classification Board, and Board of Appeals and Review. In the field there are thirteen district offices which have jurisdiction over some 4,200 local boards of examiners attached to first- and second-class post-offices and more than 140 rating boards which are connected with national parks, reclamation projects, arsenals, and other federal establishments.¹

Contrary to the popular notion, the Civil Service Commission is not charged with making appointments to federal positions. It publicizes opportunities, gives examinations, prepares lists of those eligible for appointment, and certifies the names of those who possess the proper qualifications to the officials and agencies that do make the appointments, but it cannot itself bestow positions, except on its own staff. In addition to performing these functions, it has important duties in connection with classifying federal positions so that people who do the same type of work will possess substantially the same qualifications, hold similar rank, and receive equal pay. Moreover, it has general oversight in the case of service ratings and promotional examinations which determine increases in salary and elevations in rank. Employment records upon which retirement is based are kept either directly by the Civil Service Commission or under its supervision by the personnel agencies of the departments. Transfers of employees from one department to another must be approved by the commission. Some of these functions will be

General
Functions
of the
Commis-
sion

¹ For additional discussion of this field service, see W. E. Mosher and J. Donald Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941, Chap. 5.

discussed in greater detail later in the chapter, but this summary may serve to give a general idea of what the Civil Service Commission does.

In order to facilitate the work of the Civil Service Commission divisions of personnel supervision and management have been set up in all the important departments and independent establishments during the years since 1938.¹ These are headed by personnel experts² who have been drawn from private business, state and local government, and research agencies. They not only handle the relations between their agency and the Civil Service Commission but perform personnel functions for their departments.³ In order to bring these departmental personnel administrators into some sort of an organization for clearing problems and ideas, there has been set up an interdepartment personnel committee known as the Council of Personnel Administration, on which the agencies, the Bureau of the Budget, and the Civil Service Commission have representation.

Another means of integrating the work of the Civil Service Commission with the executive office and the appointing departments has already been mentioned in another connection.⁴ One of the "little Presidents" devotes himself to personnel matters, attempting to give some measure of coordination to the efforts of the Civil Service Commission, the various appointing departments, and the executive office of the President.

RECRUITING

No aspect of public personnel administration is more important than recruiting, for unless the basic material is reasonably good no amount of in-service training, supervision, service rating, classification, or research will be able to provide an adequate staff of public employees. The Civil Service Commission has given some attention to this problem

¹ This was done by executive order of June 24, 1938.

² Some of the so-called "experts" are not regarded with respect by some observers. Some of them are unquestionably well trained, but others would seem to have little background for their positions, although they are supposedly recruited upon the basis of strict merit principles. A recent appointment to the N.Y.A. involves a person without any formal training in personnel administration and who has played a very shrewd game with politicians in his local state.

³ On the work of departmental personnel agencies, see O. C. Short, "Public Personnel Agencies" and G. R. Clapp, "A New Emphasis in Personnel Administration" both in *Annals of American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 104-118, January, 1937.

⁴ See Chap. 14 above.

for many years, but it is only recently that recruiting has received anything like proper consideration. Even now there is some feeling that not enough effort is made to bring federal employment opportunities to the notice of those who might make the best civil servants.

Underlying the entire recruiting problem is the prestige generally attached to public employment. If citizens generally believe that public employment offers satisfactory opportunities and is worthy of the services of the most capable men and women, recruiting is likely to be comparatively simple.¹ On the other hand, if popular prejudice holds that the rewards of public employment are inadequate and that only the below-average can find scope for their talents in that capacity, the greatest effort will be necessary to attract good material. The United States has not been particularly fortunate in the prestige value of public employment, at least until quite recently. Ambitious young men have rarely set up government employment as their goal because they have been infected with the widespread feeling that tenure was not dependable, remuneration distinctly inferior to that in private employment, and promotion slow and to a considerable extent based on seniority. Prior to 1933 very few university-trained people seriously thought of public service as a career; private business and the professions were adjudged to be far more promising. As a result, there was a distinct tendency for mediocre and even below-average persons to drift into government employment as the line of least resistance. That is not to say, of course, that there were no able public employees prior to 1933, for despite the general psychology a reasonable number of capable people did somehow or other get into the service. Nevertheless, the situation was a serious one.

It is instructive to compare the American attitude toward public employment with that which has characterized Britain. For a long period of time the most talented young men in England planned a career in the government service and immediately upon graduation from Oxford or Cambridge took the examinations for admission to the foreign service, the Indian Civil Service, and other branches of government employment. While, of course, the professions also attracted able young men, private business was pro-

**Prestige of
Public
Employ-
ment**

**The
English
Attitude**

¹ Professor L. D. White has published some illuminating monographs on this subject. See his *Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1929, and *Further Contributions to the Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1932.

nounced unworthy of the attention of those who combined ability and social position. No one can doubt that this tradition contributed very materially to the general excellence of the standards in British public employment.

The depression following 1929 did much to open the eyes of Americans to the promise of public employment. For the first time in many years the vaunted security of business life proved vastly overrated and large numbers of able workers found themselves out of a job. Discarding the premise that business alone is well able to handle the economic side of American life, people began in desperation to seek government assistance in meeting their problems. The Federal government undertook after a time to set up elaborate programs to cope with the alleged weaknesses in the business structure as well as to meet the exigencies of the situation. The disparity between government and private salaries virtually disappeared—indeed for a time the government could in many instances offer more remuneration than the professions or private business. With professional opportunities limited and private businesses firing rather than hiring, numerous young men and women reappraised public employment as a career. Those who ventured to try the water found that many public jobs offered variety, reasonably good compensation, fairly rapid promotion, and tolerable security. It did not require long for the word to spread among university students that public employment was far more promising than it had long seemed. The result has been gratifying to those who believe that one of the first, if not the first essential to improved government standards is competent and able public servants. It is not difficult to see the evidence of this radical change in attitude. The Foreign Service, many of whose recruits trained in consular service had resigned because of the blandishments of business, found that it had so few vacancies that no new examinations were required for two years. Single examinations announced by the Civil Service Commission for college graduates attracted as many as fifteen or twenty thousand applicants. The National Institute of Public Affairs was founded to select the most promising university seniors for internship training following graduation.¹

¹ For an interesting article on the Institute's work, see O. T. Wingo, "Internship Training in the Public Service," *Annals of American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 154-159, January, 1937.

An immediate device for recruiting persons for the federal service is the announcement of an examination. The Civil Service Commission prints folders, usually four pages in length, which carry at their top the title or titles of the position¹ to be filled. The closing date for receiving applications to be admitted to the examination is specified; the qualifications which candidates must offer in the way of age, education, health, residence, and experience are indicated in considerable detail; the duties and compensation attached to the position are outlined briefly; and sample questions may or may not be given. Finally, complete instructions are provided about the application to be submitted, the oath of accuracy to be attached, and the certificate of residence which must often be furnished. Until comparatively recently these announcements were not so informing as they might have been; nor were they so widely circulated as many considered desirable. First-class post offices usually displayed them on bulletin boards; civil service area offices also could supply them. Occasionally a newspaper would run a brief note, but no attempt was made to distribute them to those particularly qualified. At the present time, however, larger numbers of announcements are printed and they are sent to selected lists of those who are in touch with qualified persons. University departments are kept informed of examinations that are open to their major students. State and local departments which employ people in a similar capacity are furnished these announcements for display on their bulletin boards.² How much these efforts for wider and more influential publicity have accounted for the notable increase in applications it is difficult to say, but there is reason to believe that some of the now apparent interest is traceable to the improved practice. Even if there are already large numbers of applicants, the spreading of announcements is worth while, for it is probable that a more capable group of applicants will file than under a more haphazard arrangement. And after all, it is not mere numbers but promising material that is required. The fact that people already in govern-

Announcement of Examinations

¹ Frequently several grades of a given position will be included in a single examination. In this case there may be titles as follows: junior statistician, assistant statistician, associate statistician, statistician, senior statistician, and principal statistician, with salaries ranging from \$1,800 to \$5,600. Usually at least two announcements would be made for these sample titles: one for the junior and assistant grades which require an assembled examination and a second for the higher grades that involve a nonassembled examination.

² Of course some of these local offices resent the announcements, feeling that they are an attempt to attract their employees. In these cases the announcement probably ends in a wastebasket.

ment employ account for a large proportion of applicants for new examinations and the fondness of middle-aged n'er-do-wells for civil service makes it especially desirable to attract those who do not frequent post-office corridors or other places where announcements have been traditionally displayed.

EXAMINATIONS

One of the functions of the Civil Service Commission, giving examinations, probably deserves to be rated as the most important single step in the recruiting process.¹ Examinations cannot make up for lack of good material, but they should, if they are properly drawn, be able to separate the good from the indifferent and bad. Moreover, the quality of the examinations bears some relationship to the attractiveness of the civil service. If examinations have a reputation as being meretricious, unfair, tricky, unrelated to the position being filled, then they discourage otherwise serious applicants.

The majority of applicants for federal civil service examinations are given assembled examinations. After their applications have been approved, they are notified to present themselves on a scheduled date at a specified examination place. A card bearing each one's name and the examination to which he has been admitted is furnished for identification. Assembled examinations are usually given in federal buildings or in second- and first-class post offices, although other places, such as university buildings, may be designated. The commission has given due attention to the convenience of the applicants and consequently holds examinations at numerous centers in every state. The questions are uniform, however, for all of those throughout the country taking the same examination. A time limit is imposed so that stragglers will not take undue advantage.

Formerly, civil service examinations required the writing of rather extended essays on assigned topics; some examiners still argue for the validity of this type of examination and the Foreign Service makes considerable use of the essay even now. However, there has been considerable criticism of the essay question because the standards of those who do the marking must necessarily vary. Since competent people can honestly attach grades

¹ For additional discussion of this topic, see the United States Civil Service Commission, *Federal Employment Under the Merit System*, Government Printing Office, Washington, 1941, Chaps. 5 and 7.

-ranging from very good to poor on a single essay answer, there is real reason to doubt the objective accuracy of this form of examination. It is obvious that numerous persons must be used to mark an examination taken by thousands of candidates and, if there is a variation in standards, the results will scarcely be valid. Consequently more and more use is being made of the short-answer type of question. Besides increasing examination validity, short-answer questions reduce the grading problem because answers are either right or wrong. Clerks can be given keys for checking or it is even possible to use one of the complicated machines which run off several hundred papers per hour—all without human fallibility. Furthermore, the easier grading inherent in short-answer examinations makes it possible to prepare the results and draft an eligible list much more quickly than when essays are required. The chief objection to short-answer questions is that they do not easily test ability¹ to organize and that they are difficult to frame without vagueness and even without double meaning. Be that as it may, the short-answer test seems to be here to stay.¹

For a number of positions the primary requisite is actual skill in performance rather than a potential ability to acquire skill. Typists are judged very largely on the typing which they turn out; **Vocational Tests** railway mail clerks are judged by their speed and accuracy in sorting mail under somewhat trying circumstances; machinists are rated on the skill with which they operate a given machine. Inasmuch as it is generally recognized that the best way to test these skills is a practical exercise based on them, the federal civil service now makes wide use of vocational tests. Candidates for typing positions must bring typewriters with them to copy material supplied for this purpose. A record is kept of time required and the grade is based on speed, accuracy, and neatness. Those who aspire to railway mail positions have to sort imaginary mail. Some criticism is made of the requirement that every candidate produce a typewriter in typist examinations since this may work a hardship on those who come from a distance. However, it would be very difficult for the government to supply the multitude of machines that are required by the thousands who take these tests.

In examining candidates for positions that call for superior intelligence and broad background the Civil Service Commission is making

¹ For additional discussion of the relative merits of these examinations, see Mosher and Kingsley, *op. cit.*, Chap. 9.

use of tests which are supposed to determine such qualifications. University graduates are frequently given this type of examination either exclusively or in combination with a second test which reveals their grasp of the subject matter in a given field. Against these tests are leveled the same criticisms and objections as against short-answer questions, but they have the advantage of being easy to mark and are to a certain degree indicative of mental ability.

Intelligence, Aptitude, Capacity, and Information Tests

Although some of the beginning positions calling for technical and professional training are included under assembled examinations, the majority of these posts are in the unassembled category. In other words, candidates for a job as social service analyst, which requires professional training and some practical experience and which carries a beginning salary of \$3,800 per year, are not asked to present themselves at any one place for a written examination. Inasmuch as training and experience are the most important factors determining ability to fill these positions successfully, the candidate is required to submit a detailed statement of the courses he has taken in specified fields, the degrees he holds, the books and articles he has written, the investigations he has made, and the practical experience he has had in his profession. Transcripts of credits may be required from universities; references from those under whom one has received professional training or employment are necessary; and an essay of several thousand words describing qualifications and pertinent background may be submitted. Examiners in Washington draw up a scale of weights by which to rate the education and professional experience and thus arrive at a grade for each candidate. The difficulty of grading unassembled examinations is, of course, tremendous. Not only a civil service expert but also an expert in the field of the examination must read every submitted test. Lewis Meriam tells a story which indicates the necessity of careful and expert grading.¹ A civil service examiner and a Department of Agriculture representative were grading theses submitted for an unassembled test. "Suddenly the silence was broken by an exclamation of 'Great Scot' from the Agriculture man. The Commission examiner asked: 'What's the matter?' 'This thesis here,' said the specialist, and he read its title. The Commission examiner said: 'Yes, it is by all odds the best of the lot.' The Department of Agriculture man bowed and

Un-assembled Examinations

¹ *Public Personnel Problems*, Brookings Institution, Washington, 1939, p. 82, footnote.

said: 'Thanks for the compliment. I wrote it and this — cribbed it.' "

Either the assembled or the unassembled type of examination may include a personal interview or oral examination, but the latter is much more likely to require this supplementary test. The rank and file of positions of clerical or stenographic character can be satisfactorily filled on the basis of a written examination, since they do not involve personal qualities to the extent that do some of the higher executive posts. Of course, it is pleasant to have agreeable clerks and stenographers, but that is in most cases secondary. On the other hand, some well-trained technicians may be completely ineffective because they lack common sense, the ability to collaborate, and related qualities. A written examination does not indicate these personal endowments very clearly; nor will a rating based on educational and professional background always be an accurate measure of these very important factors, although the letters furnished by former employers and teachers of the candidate may throw some light on his strength or weakness. In order to ascertain character as opposed to intellectual qualities personnel bureaus frequently stipulate an oral examination or a personal interview with two or more examiners who have had experience in the field in which the position is classified. However, the federal Civil Service Commission has not made the most extensive use of this device, despite the arguments that are adduced to support it. The large number of applicants makes an oral examination an even more burdensome affair than the unassembled examinations now employed—even they sometimes require a year or more to grade. Moreover, the fact that candidates are scattered over the entire United States adds to the complications. State and local personnel boards face the problem of distance, but it is nothing like as difficult as that which confronts the federal authorities. Personal interviews by appointing agencies serve to some extent as a substitute for this technique as an integral part of the examination, but there is still a considerable argument in favor of a wider use of the oral interview by the Civil Service Commission itself. It may be added that this method of rating candidates also has weaknesses; for there is often a distinct difference of opinion among oral examiners about the capabilities of a single person. Inasmuch as many oral boards would be necessary if this device were used for the more popular examinations, it is apparent that there would be an inherent lack of uniform standards.

Personal
Interviews
and Oral
Examina-
tions

There is a widespread notion that the American and English civil service examinations are far apart in basic concept. The English examination is supposed to be very general in nature, aiming at ability rather than acquired knowledge or experience. On the other hand, the examination in the United States is often adjudged as practical, being designed to test current familiarity with a field rather than general intelligence. In other words, the English are credited with picking the best available candidates without reference to what they know about the position to be filled, expecting to train them after entrance into the public service. The United States is, on the other hand, said to want people who have already been trained and can take over the duties of a job immediately, even though they may not possess the keenest intelligence. In reality, there is far less difference between the two systems than this generalization indicates. The English as well as the Americans recruit stenographers, accountants, and routine workers through the use of practical tests, for it would be out of the question to furnish training in these fields to large numbers of raw candidates. Any difference in the two personnel systems is largely in filling positions which call for a high degree of initiative.

The English have geared their examinations for the administrative and some of the executive class rather closely to the universities, with the result that the examinations resemble those given at Oxford and Cambridge. Moreover, the English prefer to take their future civil servants of the top classes immediately after they are graduated from a university and, indeed, place the maximum age at twenty-three or twenty-five. The United States has had until recently few positions under the merit system that would compare with the administrative class in England. In selecting candidates for general administrative posts taken from civil service lists, there has been less disposition to insist on a tender age, superior intelligence, and future promise.

The public officials in this country are far less convinced that university training is the avenue through which candidates for the ranking positions should enter the public service—indeed, some of the most influential have not been university graduates at all. Nevertheless, there has been a marked trend toward the English practice during the last decade. Regular examinations are now held especially to attract university seniors and recent graduates to general administrative and technical positions.

**American
and
English
Examina-
tions Con-
trasted**

**The
English
Adminis-
trative
Class**

**Attitude
toward
Univer-
sities in the
United
States**

Moreover, these examinations, although less searching from a scholarly standpoint than the corresponding English examinations, do attempt to ascertain basic intelligence and ability as well as familiarity with a field. While we seem to be following the English lead to recruit for non-clerical positions, they have modified somewhat their plan and currently place less emphasis upon the classics and more upon the social sciences.¹

As soon as the candidates in an examination have been rated, an eligible list is prepared which contains the names of all who have received a grade of 70 or more, with the highest at the top **Eligible Lists** and those having just 70 at the bottom. From these lists names are drawn as calls come in from the various appointing agencies. Eligible lists are ordinarily valid for a year and may be extended by executive order if it seems desirable.

The veterans of former wars have been a potent force in American political life. In addition to supporting movements which they consider patriotic, they labor assiduously to wangle special **Veteran Preference** favors, despite the fact that no country in the world surpasses, and indeed few equal, the United States in wages and allowances to the members of its armed forces. Not content with asking bonuses and pensions, the veterans feel that they are entitled to the first claim on the public jobs and through organized pressure groups have managed to secure preferred treatment for themselves. All honorably discharged veterans have five points added to their examination grades; veterans disabled in service, their widows, and the wives of veterans who are for any reason physically incapacitated receive ten points. Moreover, under executive orders if they have a passing mark at all, they are placed at the top of the eligible list.² There is a raging controversy over the justification of this practice. Veterans seem absolutely convinced that the country owes them a preference, while personnel experts reply that there is no logical basis for encumbering and weakening the public service with mediocre or inefficient people who are not capable of

¹ For more detailed treatment of the English system, see H. M. Stout, *Public Service in Great Britain*, University of North Carolina Press, Chapel Hill, 1938.

² The maximum age limits placed on most federal civil service positions are removed for veterans who want jobs. If the age limits were to apply to them as well as to other citizens, the problem of inefficient veterans in public employment would be greatly mitigated, since today, more than a score of years after World War I, most veterans are too old to slip under the age limits. As it is, however, the lack of maximum age levels for this older class means that as their advanced years render them unfit for private employment they will turn increasingly to the government for "work-pensions."

earning a livelihood in any other way. Some of the veterans and their wives have performed reasonably satisfactory service, but in other cases they have done little or nothing worth while. In general, it would seem more sensible to deal with these cases on an outright pension basis rather than through the guise of public jobs.

APPOINTMENTS

The Civil Service Commission does not make appointments, but it does assist the appointing agencies when there are vacancies to be filled. In the next few paragraphs we shall trace briefly the steps after examination which lead to positions on the federal pay roll.

When there is a vacancy in a department under the merit system, the appointing officer in that agency notifies the Civil Service Commission that an appointment or appointments are in the **Certification** **offing**. The Civil Service Commission then proceeds to certify the three highest names on the appropriate register, or eligible list. If the positions call for junior stenographers, names will be taken from the junior stenographer register; if junior administrative technicians are desired, the names, of course, come from that particular register. When an eligible list is new, the names certified are of those who have grades as high as 90;¹ but as appointments are made, names are removed until it may be necessary to certify people who have a bare passing mark, unless a new register in the meantime supplants the older one. Some appointing departments are careless in asking to have names certified and may wait several weeks or even several months before making appointments. Since during this time the three names cannot be certified for any other position, people high on a register may actually not receive appointment as quickly as those further down. This seems to indicate a need for limiting the period that a department can retain the names certified to it as eligible for a position, for the present carelessness of certain agencies works a hardship on those seeking public jobs.

In asking for a certification, an appointing agency may make detailed specifications of the exact background which it desires a candidate to have. For the routine positions there is likely to be little of this, but when higher positions are involved, it is not uncommon to find specifications that eliminate many of those who are high on

¹ Grades which range from 80 to 90 are considered quite high; in the foreign service examinations virtually no candidates ever receive more than 90. Grades in the 70's are not bad.

a register. In support of this practice it is urged that a certain job which pays, let us say \$4,600, requires someone who has experience of a certain nature. Critics maintain, however, that this constitutes a loophole which permits appointing officers to disregard the candidates who have high grades in favor of their friends who scarcely more than passed. Of course, appointing officers cannot ask for a definite person and anyone high on the list who has the qualifications stipulated is certified in preference to those lower down. Nevertheless, it is possible by going into considerable detail to limit very severely the number who can qualify, even to permitting only a single person. In so far as the specifications to determine the certification are essential to a good appointment, there seems to be a valid argument for the practice. However, if it is used to get personal friends certified over eligibles whom tests show to be more capable, then it deserves the severe criticism that some people in Washington shower on it. The extent to which appointing authorities abuse this privilege is difficult to ascertain. It is well known that there are registers which are almost if not entirely neglected,¹ while persons on other registers are transferred at the request of the appointing authority so that they can be given jobs. Moreover, there are cases of candidates never receiving appointments, although they have repeatedly stood at the tops of registers. If personal qualities are such that these high-ranking eligibles could not possibly do a job well, it is doubtless justifiable to ignore them year after year in favor of those lower ranking ones who have more satisfactory personalities. Of course, if the certification system is distorted, as some members of Congress allege, to build up a coterie of followers and friends, it amounts to a new variety of spoils under a guise of the merit system.

If an appointing authority is not satisfied with the qualifications of the persons whose names have been certified, he may call them in for personal interviews. Inasmuch as it is scarcely feasible to summon those who live a thousand miles distant, a near-by person may be appointed. If no person of the certified three is acceptable, it is possible to return the names and ask for another certifica-

Departmental
Specifications

Personal
Interviews

¹ A few years ago certain registers of social science analysts were set up with several thousand persons listed. Appointing authorities did not favor the examination to begin with and have made virtually no use of the lists which cost the government almost \$100,000. In the meantime large numbers of appointments involving similar qualifications have been made. To what extent the opposition of the appointing officers to the examination has entered into their failure to use the resulting lists is an interesting question on which there is a difference of opinion.

tion, although reasons must be given. If one person is chosen from among the three, the personnel office of the department will formally notify the fortunate one and the remaining two names will be returned to the Civil Service Commission which will replace them on the eligible register.

Appointments under the merit system are made on a provisional basis until the appointee has served a probationary period of six months. If he does not prove satisfactory, he may be dropped without undue difficulty during that initial period; however, if his first half a year turns out well, he is ordinarily accorded permanent tenure.

**Provi-
sional
Appoint-
ment**

Congress has been fond of stipulating that civil service appointments shall be apportioned among the several states according to population unless no eligibles are available from certain states.¹ This requirement violates a cardinal principle in modern personnel administration and has been severely criticized.

**Apportion-
ment
among the
States**

In reply the proponents of the requirement argue that candidates with equal qualifications should not be penalized because they happen to reside some distance from the national capital, adding that many departments in Washington are reluctant to hire anyone without an interview and consequently call in those who live in the District of Columbia and the near-by states of Maryland, Virginia, and Pennsylvania. And, indeed, some substantiation is given these charges when one examines the number of appointments made from among the residents in the vicinity of Washington.

CLASSIFICATION, COMPENSATION, PROMOTION, AND RETIREMENT

For many years there was no particular relationship between the nature of the work of a given job and its title and compensation. Thus an employee in one department might receive several hundred dollars more or less each year than someone doing exactly the same sort of labor in another. Despite persistent criticism from public administration students and even from the Civil Service Commission itself, Congress long refused to provide any satisfactory basis for classifying the positions in the federal service. Finally, in 1923 Congress created a Personnel Classification Board to study the matter and report to Congress such recommendations as seemed

**Classifica-
tion**

¹ See United States Civil Service Commission, *Federal Employment under the Merit System*, Government Printing Office, Washington, 1941, pp. 51-52, for the current practice.

desirable. This board after much delay finally did classify the merit system positions in the District of Columbia, but it was abolished before it did anything about the 85 per cent or so of the federal employees outside of Washington. At present a personnel classification division of the Civil Service Commission is engaged in carrying on elaborate studies which are to constitute a basis for a nation-wide classification plan.

At present there are five general classes in the competitive service: (1) professional and scientific, (2) subprofessional, (3) clerical, administrative, and fiscal, (4) custodial, and (5) clerical-mechanical. The first is subdivided into nine grades and carries a salary range of \$2,000 to \$9,000. The second has eight grades and a salary range of \$1,020 to \$3,200. The third, the most elaborate of all, includes sixteen grades with a salary range of from \$1,260 to \$9,000. The fourth has ten grades and salaries varying from \$600 to \$3,200. Finally, the clerical class which calls for mechanical work is subdivided into four grades, with wages of from 55 to 60 cents and 85 to 95 cents per hour.¹

In comparison with foreign governments, or the state and local governments in the United States, the Federal government pays rather generous salaries to its employees. England offers a **Compensation** very few members of its administrative class higher salaries, and Germany is also reasonably considerate of some of its ranking employees, but by and large neither deals as generously with its public employees as the national government in the United States. Even so, there has been a considerable amount of criticism aimed at the salary scales. Naturally, federal employees would like a higher level all along the way and their organizations are constantly working for increased salaries. Those who occupy the positions at the top ask for particular pity, for their maximum of \$9,000 is, they maintain, far less than corresponding positions command in private employment. Those who would increase the attractiveness of public employment frequently argue that the rate of compensation is a major obstacle to any widespread interest on the part of ambitious and capable people.² Salaries of \$600 are not impressive, but it must be remembered that these are

¹ For a much more detailed discussion of classification by one who has been intimately associated with the problem in the Federal government, see Ismar Baruch, *Some Facts and Fallacies of Classification*, Civil Service Assembly of the United States and Canada, Chicago, 1935.

² For an unusually objective discussion of this point, see Lewis Meriam, *Public Personnel Problems from the Standpoint of the Operating Officer*, Brookings Institution, Washington, 1939, pp. 112ff.

few in number and ordinarily do not involve anything like full-time work. The majority of the clerks and stenographers receive from \$100 to \$150 per month, while the ordinary compensation of more highly trained persons ranges from \$150 to \$350 per month. In general, the Federal government pays higher salaries to its clerks and stenographers than private employers offer, especially outside of Washington. Also beginning salaries for professional and scientific employees are somewhat higher than is customary outside the government service—few graduates of universities and professional schools can step into incomes of from \$2,000 to \$3,200 immediately except in the government service. However, the maximum civil service remuneration is far under that which corporations and private firms at times maintain. It may be that some increase in the maximum amounts permitted by the present law should be made, although it is improbable that the public service can or should ever pay the \$25,000 to \$100,000 salaries which private business finds it possible to bestow on a few favored persons. In general, measured in terms of what other governments do, the federal scale of compensation does not present at all an acute problem, although minor adjustments might be desirable.¹ The high and increasing cost of living during wartime, especially in Washington, of course, results in an immediate problem of some gravity, particularly in the cases of clerical employees.

Governments the world over have had more trouble with their promotion systems than with almost any other personnel problem.² Tenure is important of course; adequate salary scales are basic; prestige plays a large role; and retirement allowances are necessary. But even if these are all satisfactory, there is serious weakness unless an adequate promotion plan is in operation, for one of the first questions that able young people ask about any occupation is "What about the future?" The easiest basis for determining promotions is that of seniority; in other words, promotions depend wholly

¹ Lewis Meriam, while admitting that the resignation of top employees whom the government has spent much time and money training is a serious problem, questions that merely raising the top pay is a worth-while expedient. He says: "Raising the government's bid may only serve to force private enterprise to raise its bid and thus enhance the attractiveness of the particular agency as a training school." *Public Personnel Problems*, Brookings Institution, Washington, 1939, p. 112. It would seem from that, then, that the prestige value is a far more important consideration than salary in the higher executive posts.

² See, for example, Leonard D. White, *The Civil Service in the Modern State*, University of Chicago Press, Chicago, 1930.

upon the length of service one can show. Needless to say, this system does not appeal to ambitious and energetic young men who are not satisfied to remain near the bottom for many years. Nor does it provide much incentive to superior performance of duty, for under seniority promotion is virtually automatic despite the quality of work. No one is very eloquent in support of seniority, but the question of what to substitute is exceedingly troublesome. Any other system is likely to be open to charges of favoritism from employees themselves as well as the general public. Even if no real basis for such an assertion exists, there is always a popular suspicion that political and personal considerations enter into the decisions of a board or administrator.

Although in the federal service some consideration is given to seniority, service ratings and promotional examinations have played a large part in determining salary increases and promotions in rank. Service ratings are given employees by their supervisors and communicated to the Civil Service Commission for preservation as part of the personnel records. Employees are rated on such items as industry, initiative, neatness, promptness, cooperation, and ability to take criticism. The Pendleton Act specified that no official under the merit system shall be promoted "until he has passed an examination, or is shown to be specially exempted from such examination." This has been supplemented by executive orders requiring the same technique. In practice, however, this does not always work out well, for some rather mediocre people have a flair for examinations, while other very good ones somehow or other fail to show up at all creditably.

Another complicated problem of the promotion system is the extent to which the more important jobs are to be filled by advancing employees already in the service or by hiring experienced outsiders. Morale is not improved by disregarding just claims of people already employed; on the other hand, new blood is often desirable to neutralize the bureaucratic psychology that is always ready to grow upon the slightest encouragement even in the best-administered agencies. While it is not the practice to limit the higher positions to those already in the federal service, many of the vacancies are filled by the advancement of promising young employees. It has been asserted that some of the recent examinations have been framed in order to give a distinct advantage to the holders of

Service
Ratings
and Promotional
Examinations

Admission
of Outsiders
into the Higher
Positions

federal positions, if not to bar outsiders entirely. How much truth there is to such an allegation is difficult to judge. In any case, it might well be that those with background in public employment would by the very nature of their experience be more familiar with certain fields than outsiders could easily be.

It is the practice the world over to provide retiring allowances for public servants. Indeed this has been advanced as one justification for **Retirement Provisions** not paying higher salaries during active years. However, it was not until 1920 that Congress finally set up a general retirement plan for federal employees, although it has been most considerate of the claims of war veterans for many years. The act of 1920, with several subsequent amendments, provides for a compulsory pension scheme to be largely, although not entirely, supported by the contributions of the employees themselves.¹ Amounts equal to five per cent ² of the salaries of merit system employees plus a federal contribution of \$1.00 are set aside each month in a pension fund. If additional amounts are required to meet the claims on the fund, appropriations are made from the public treasury. Prior to 1942 some employees retired at sixty-two and sixty-five, but now all must surrender active duty at seventy years of age.³ For many years the maximum annual retiring allowance was \$1,200, but many of the higher officials complained at this rate on the grounds of inadequacy and the size of the deductions from their salaries, pointing out that foreign governments sometimes permit their retired employees to draw as much as half of their salaries, at times without demanding contributions. To meet these objections the amendments added in 1942 provided that a civil servant who has been active for thirty-five years can qualify for an annuity equal to one-half of the average salary received during any five years of public employment. Additional provisions make some assistance available to those who lose their health or are otherwise disabled after they have served the government for a specified number of years.

MISCELLANEOUS

The policy of the government regarding sick leaves and vacations is more generous than that of most private concerns. Until a few years

¹ Many governments, including England, do not require contributions from employees.

² Prior to 1942 the rate was three and one-half per cent.

³ Under certain circumstances voluntary retirement is permitted prior to age seventy by the legislation of 1942.

ago there was no uniformity of practice in granting vacations with pay, but this has now been regularized throughout the classified service. Twenty-five days' absence every year on account of illness is permitted without deduction in pay, while twenty-four business days are given on pay for vacation purposes.¹

**Sick Leave
and Vacations**

Although public employees under the merit system enjoy what is usually designated "permanent tenure" after they have passed their probation, they are subject to disciplinary action and even to removal for cause. Neglect of duty, regular tardiness, and infraction of rules and regulations may be penalized by a reprimand, a reduction in rank, and suspension for periods not to exceed seventy days with loss of pay.²

**Disciplinary
Actions**

If the position which an employee holds is abolished as a result of an economy act or the consolidation of departments, he has no recourse. However, his name is placed on the lists of the Civil Service Commission and, if he can find a vacancy which calls for someone with his qualifications, he may demand prior consideration. As long as his job remains, he cannot be separated from it unless he has proved quite incompetent, dishonest, undisciplined, or otherwise unsatisfactory. Ordinarily it is said that a civil servant can only be removed for the "good of the service," the formal procedure of which requires a written notification of the charges lodged against him. The accused then has the right to reply to those charges, but he is not guaranteed an oral hearing,³ although he may be given one out of courtesy. There is no board or court to which he may appeal, but it is quite possible that his labor union will intercede on his behalf. The lack of an appeal makes the tenure somewhat meaningless on a legal basis, for the "good of the service" permits the supervising officer to fire an employee on almost any grounds, although the law specifically prohibits removal for refusal to contribute money to a political party. In practice, however, tenure is usually quite secure—indeed there are many who believe that there is too much protection for large numbers of indifferent employees.

Removals

Although the Federal government has expected candidates for public positions to have at least some previous training to fit them for their

¹ However, during the period of the war vacation leave has been suspended or at least severely curtailed. Even ordinary holidays may not be observed.

² See United States Civil Service Commission, *Federal Employment under the Merit System*, Chap. 11.

³ In state and municipal civil service systems the right of an oral hearing is often given.

jobs, it is now engaged in a fairly elaborate in-service training program.¹ Many of the employees have had only a modicum of preparation; others were trained so long ago that their knowledge is out of date; while still others are ambitious to prepare themselves for additional responsibilities. The universities located in Washington offer many courses especially for government employees after office hours. Fairly large numbers of persons² have taken advantage of these courses, but the majority have been content to drift along year after year. After lengthy discussion the government departments have agreed that they must assume the responsibility to provide more adequate training programs. The Department of Agriculture has long held first place in this matter and now operates a graduate school with more than two thousand students enrolled. The Census Bureau provides courses dealing with statistical problems, state and local government, population, and other topics. Likewise a number of courses are offered dealing with the general problem of administration; others stress public personnel administration; and still others involve fiscal problems. The competition with the private institutions in Washington is sometimes condemned as unfair, even though fees are collected from those who enroll.

As far back as the closing years of the nineteenth century certain employees of the Federal government found it to their advantage to organize themselves into associations.³ As the movement became stronger, the employee associations took on the characteristics of labor unions, although they did not designate themselves as such. Early in the present century the post-office employees started agitating for increased pay and shorter hours. Theodore Roosevelt was incensed at this pressure and issued orders sternly forbidding lobbying practices, but even his vigor was not enough to stem the rising tide. In 1912 Congress was persuaded to recognize the right of federal employees to organize and to petition Congress. Since 1920 the movement has made great headway, until at present something like 90 per cent of the employees in Washington are claimed by the various associations. A National Federation of Federal

**Organiza-
tions of
Public Em-
ployees**

¹ See E. Brooks, *In-Service Training of Federal Employees*, Civil Service Assembly of the United States and Canada, Chicago, 1939.

² American and George Washington Universities have scheduled dozens of special courses, which are frequently taught by a government official. Several thousand employees may be enrolled at one time in these many courses.

³ Letter carriers organized as early as 1889 and post-office clerks the following year.

Employees, formerly affiliated with the A.F.L.,¹ has a large membership drawn from numerous agencies. The American Federation of Government Employees, a breakoff from the older organization in 1932, enrolls many of the employees of the newer federal agencies and maintains spiritual relations at least with the C.I.O. The letter carriers, railway mail clerks, and postmasters have their own independent organizations.

Whatever one may think about the place of employee organizations in government, it must be admitted that a great deal has been accomplished by those associations to improve working conditions. The salary scale, the pension system, sick leaves, equal pay for the same work, and uniform vacation rules, holidays, closing hours, and so forth, are all largely the result of the efforts of the several associations of federal employees.² These associations have protected their members against the unreasonable demands of thoughtless administrative officials who, in their zeal to show that their agencies are indispensable, have required night work four or five times each week without additional compensation.³ Most of the associations have pledged themselves not to use the strike as a weapon against the government and have actually denied themselves the use of that device in their dealings with the department heads or Congress.

Accom-
plish-
ments
of Em-
ployee
Organiza-
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¹ This organization withdrew from formal relations with the A.F.L. in 1931, although it continues to represent the A.F.L. point of view.

² Nevertheless, the associations have by no means always had their way. For example, an attempt of the powerful post-office groups in 1941 failed to bring about a 2½ cents per hour increase in letter-carrier compensation.

³ Some of this overtime work has been necessary and the employee organizations have permitted a reasonable amount, but where overambitious executives want to establish a record by constant night work it has been insisted that they employ extra stenographers for that time.

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CHAPTER XXV

NATIONAL REVENUES

IN 1789 the total expenses of the national government averaged only approximately \$1.00 per capita; hence the problem of revenues was comparatively simple. In 1942 Harold D. Smith, director of the Bureau of the Budget, estimates that federal revenues will amount to almost \$100 per capita¹ and even this income will not begin to meet the expenses. Of course, the aggregate wealth of the United States has increased far beyond the expectation of those who lived in 1789, thus making it feasible to raise vastly larger amounts. Nevertheless, a per capita national revenue of some \$135 in 1943 presents grave problems even in this day and age. Those who look upon public finance merely as a bookkeeping proposition have professed equanimity, but the new tax rates may impel even these people to perceive that such revenues are not forthcoming without severe burden on the people of the country.

The responsibility of finding income to meet, or in these days partially meet, governmental expenditures has been entrusted by the Constitution to Congress, the exact authorization being as follows: "The Congress shall have power to lay and collect **Basis of the Taxing Power** taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States."² The President may recommend action, as he did in the fall of 1941, looking toward a pay-roll tax which would siphon off a considerable portion of the increased national income in order to safeguard against inflation, but he has no power in his own name to take action.³ The Treasury Department naturally enough concerns itself with revenues and not infrequently advises Congress as to what is required and how the amount needed can best be produced; yet here again the final action can be taken only by Congress.

¹ Quoted from the *New York Times*, October 5, 1941. Approximately \$12,000,000,000 is estimated. For the fiscal year of 1943 the President asked Congress to raise \$17,852,090,000.

² Art. I, sec. 8.

³ This recommendation was made in November, 1941, by letter to Chairman Doughton of the Committee on Ways and Means of the House of Representatives and urged speedy action.

TAX LIMITATIONS

In general, the authority to raise revenue is extensive and complete, which is appropriate. However, those who drafted the Constitution foresaw certain dangers that might arise in connection with this power and therefore they inserted several limitations that should be borne in mind.

We have noted that the express grant of the power to levy taxes and other assessments concludes with the words "for the common defense and general welfare of the United States." This is often referred to as the "public-purpose" limitation and for many years has occasioned discussion among constitutional authorities. It is reasonably clear what is meant by "common defense," but "general welfare" presents a certain amount of ambiguity. Some students of the Constitution read into these words a broad grant of discretion which would permit money to be raised for virtually anything which is regarded as desirable. Others maintain that the clause is not a positive bestowal of authority, but rather a limitation on the taxing power. Almost immediately after the terms of the Constitution were made public, people began to speculate on the meaning of these words and not a few interpreted them as an "unlimited commission to exercise every power which may be alleged necessary for the common defense or general welfare."¹ However, the authors of the *Federalist* vigorously denied this assumption, branding such an attitude as "stooping to such a misconstruction."² For many decades the view expressed by the *Federalist* more or less prevailed,³ though every now and then there arose those who denounced it. The philosophy of the New Deal turned its back on such a negative concept,⁴ with the result that the taxing power was widely used after 1932 to bring about certain ends. The initial attitude of the Supreme Court was not favorable to this point of view if the case of *United States v. Butler*⁵ is any indication, but the reform which took place following 1937 reversed this position to some extent at least. Altogether, it seems probable that Congress in the future will be permitted to use its own judgment in determining what constitutes the "general welfare" with little fear of interference by the Supreme Court.

¹ *The Federalist*, No. 41. ² *Ibid.* ³ See Chap. 19 above for additional discussion.

⁴ See James F. Lawson, *The General Welfare Clause*, author, Washington, 1934.

⁵ 297 U. S. 1 (1936).

Immediately following the clause which confers the taxing power are these words: "but all duties, imposts, and excises shall be uniform throughout the United States." ¹ The jealousy among the original states doubtless caused the insertion of this clause, for there was a fear that somehow or other action might be taken which would work a disadvantage to the commerce of the weaker states. Through the years this clause has been interpreted quite liberally until it does not impose a very serious limitation on taxation at present. Net taxable incomes exceeding \$5,000,000 are (1941) required to pay a surtax of 77 per cent, while net taxable incomes under \$2,000 pay only 6 per cent; it would seem at first sight that this violates uniformity, but the courts have ruled that uniformity requires equality only for those in the same circumstances. Thus it would not be possible to tax a Rockefeller with a net income of over \$5,000,000 at a rate of 81 per cent and a Ford with the same income at, say, a rate of 61 per cent. Inheritance and gift taxes have been graduated according to size of the estate or gift and this, too, has been upheld as legitimate.

The Uniformity Provision

Nor does uniformity necessitate that all levies shall fall with equal weight on all sections of the country. Import taxes are mainly collected at ocean ports; tobacco excises paid by companies in North Carolina are out of all proportion to similar levies in states where there are few if any tobacco-manufacturing establishments. Uniformity does emphasize geography to the extent that imports of exactly the same character, in the same condition, and coming from the same place pay the same import tax. However, if one consignment comes from a country with which we have a reciprocal trade agreement and another of the same kind from a country with which we have no such agreement, the import tax may be much heavier in one case than the other. Similarly if a cargo of wool arrives at San Francisco and another of the same grade comes to New York, uniformity would not demand the same import duty unless the condition of both cargoes is the same; for example, if one load of wool is washed and the other is unwashed the customs duty might vary considerably between the two ports of entry.

Geographical Uniformity

Because the inhabitants of the southern states feared that they might be discriminated against under a system which permitted import taxes on goods brought to them from England and compelled them to pay export taxes on their agricultural products exported to Eng-

¹ Art. I, sec. 8.

land, a provision was inserted in the Constitution as follows: "No tax or duty shall be laid on articles exported from any state."¹

Prohibition of Export Taxes Many governments of the world do levy export taxes, finding them during normal times an important source of revenue, but this is not possible in the United States, though the time has long ceased when the southern states needed this protection. Considering the high cost of manufacturing many products due to the heavy labor costs and burdensome overhead, it is sometimes argued that it is just as well that Congress cannot add to the handicap by putting on an export tax. On the other hand, large quantities of lumber have been shipped from Oregon and Washington to the Far East and Latin-American countries largely because it was cheaper to import from the United States than to cut native timber; the net effect being to reduce our already seriously threatened timber resources. An export tax on such products would doubtless have saved important supplies for future use at home.

Apportionment of Direct Taxes Another limitation on the taxing power which goes back to the fears and jealousies existing among the original states is that which specifies that direct taxes must be apportioned according to population. The Constitution reads: "No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."² Before the end of the eighteenth century the Supreme Court had interpreted "direct taxes" as meaning poll taxes and taxes on land,³ leaving various other types of taxes as of the indirect variety which could be levied freely without apportionment. It may be added that apportionment does not rule out direct taxes, but it makes them so difficult to administer that they have not been attempted for more than half a century and will probably not be resorted to except in cases of extreme need. The various states present such a diverse picture in per capita wealth that apportionment of federal taxes on the basis of population would work a great hardship on the poorer states, for example, Mississippi, Arkansas, and the Dakotas.

In looking about for new sources of revenue to meet the expenses of the Civil War, Congress in 1862 enacted a law providing for the imposition of income taxes without apportionment among the states on the basis of population. This law operated for a number of years,

¹ Art. I, sec. 9.

² See *Hyllon v. United States*, 3 Dallas 171 (1796).

³ Art. I, sec. 9.

was finally repealed after the emergency was over, but did not come up for review by the Supreme Court until 1880.¹ In deciding the case the Supreme Court held that an income tax is not a direct tax as that term is used by the Constitution and consequently does not need to be apportioned. Here the matter rested until the hard times of the 1890's again led Congress to impose an income tax without apportionment among the states. Almost immediately an attempt was made to have this tax declared unconstitutional on the ground that a tax on income derived from land amounted to a tax on the land itself. A case involving wealthy New York parties reached the Supreme Court the next year after the law went into effect, and after two hearings and a change in the personnel of the court it was finally held by a five-to-four vote that the law was contrary to the Constitution.² The Supreme Court did not go so far as to say that all income taxes are direct taxes, but it did rule out the tax on the income from land and state and municipal bonds, at the same time declaring that the entire law would have to fall because of these parts. Seldom has the court been more severely criticized for a decision; reports were rife that the original hearing had resulted in a vote for the constitutionality of the act and that political considerations played a part in the vote after the second hearing. An amendment to the Constitution was proposed to remove the barrier set up by this decision, and in 1913 the Sixteenth Amendment was proclaimed in effect, providing that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Acting under this authorization Congress has enacted a number of statutes imposing income taxes on both individuals and corporations and these levies have become among the major sources of national revenue.

The Question of the Income Tax

There is nothing in the Constitution which specifically states that the national government shall not tax the instrumentalities of the several states, but common sense dictates that under a federal form of government there must be cooperation rather than interference. In the opening years of the nineteenth century the Supreme Court gave its attention to this matter in the landmark case of *McCulloch v. Maryland*,³ in which Maryland sought

State Instrumentalities

¹ See *Springer v. United States*, 102 U. S. 586 (1880).

² See *Pollock v. Farmers' Loan and Trust Co.*, 158 U. S. 601 (1895).

³ Reported in 4 Wheaton 316 (1819).

to tax one of the branches of the Bank of the United States. Laying down the rule that a state could not hinder the national government in the exercise of its power through the medium of taxation, the court stated that conversely the national government could not interfere with the states under such a guise. For many years the courts were very sensitive to any suggestion of encroachment, however slight it might be; thus it was ordained that state employees could not be expected to pay federal income taxes on their salaries and that state bonds or income derived therefrom could not be taxed. It was difficult for many observers to see how an ordinary income tax on state employees, which merely required them to pay their fair share of the expenses of the national government, could possibly be considered interference with the operation of state government. In the middle 1930's the Treasury Department sought to collect income taxes from persons who were rather remotely attached to state pay rolls and in the New York Port Authority case the Supreme Court upheld that right. Growing out of that case there has recently come a general rule approved by both Congress and the state legislatures which permits the national government to tax the salaries of state employees and the states to tax salaries of federal employees residing within their borders.

After considerable discussion, in the course of which President F. D. Roosevelt placed himself on record as favoring the extension of this rule to cover state bonds, legislation was proposed to Congress authorizing the collection of a tax on income derived from privately owned state securities. The state and local officials have been strongly opposed to this new proposal on the ground that, while they would doubtless be given a complementary right to tax income arising from federal bonds, the net effect would be unfavorable to the states. At the present time the actual property used by states in connection with their operation is definitely not subject to federal taxation. Nor could a tax which would have the effect of controlling or limiting a direct action of a state be countenanced. But taxes on the note issues of state banks have forced the suspension of their circulation; ¹ salaries of state employees are now regularly taxed just as are similar incomes of those in private employment; and there is considerable likelihood that the interest payments of state and local bonds will be removed from the exempt status which has long been enjoyed. With the needs of the various governments for addi-

Recent Developments Relating to Exemptions

¹ See *Veazie Bank v. Fenno*, 8 Wallace 533 (1869).

tional revenues at an all-time high, it is natural that an attempt should be made to get at billions of dollars of bonds which have hitherto been tax free. It is difficult to prove that the taxing of these securities would result in any curtailment of state powers, though it might be that interest rates would have to be increased slightly on new issues and that these new bonds would be less attractive to investors. But the federal revenues could be increased by many million dollars and the states would also profit.

The taxing power is ordinarily associated with the raising of revenue and has in general been employed for that purpose. At the same time it has far-reaching significance as a means of regulating certain practices which may be regarded as requiring attention. There is no direct constitutional prohibition against using the taxing power for regulatory purposes and Congress has at times not hesitated to wield this control. The tariffs which have been in effect through most of the years of the republic have produced sizable revenues, but it would be absurd to pretend that they have not been even more important as a protection to American industry against foreign competition. The congressional act placing a heavy tax on the face value of notes issued by state banks may be cited as an example of a tax which, though on its surface a revenue measure, actually was intended to remove such notes from circulation. Federal inheritance laws, which permit a credit in the case of those states having their own corresponding laws, have been important in encouraging the several states to provide for such taxes. The federal tax on narcotics may be offered as another example of a tax intended to regulate rather than produce revenue.

**Regulative
versus
Fiscal
Purpose**

Yet at times the Supreme Court has refused to uphold a regulative tax when Congress has been fit to adopt one. For example, the tax imposed on goods produced by child labor was invalidated on the ground that Congress could not do indirectly through the taxing power what it was not empowered to do directly.¹ Again in the A.A.A. program and bituminous-coal control cases the Supreme Court refused in the middle 1930's to uphold the use of the taxing power for regulative purposes. However, Congress revamped the legislation, still retaining the regulative taxes to a considerable extent, and the Supreme Court has found the new laws satisfactory. Thus at the present time the taxing power is a very important

**Changing
Attitude
of the
Supreme
Court**

¹ See *Baily v. Drexel Furniture Co.*, 259 U. S. 20 (1922).

device for regulating certain practices and indirectly bringing about ends which are regarded as socially desirable. It would hardly be correct to state that there are no limits to its use in this field, but it apparently is now accepted as a legitimate device which may be employed within reason.

There has long been an impression on the part of numerous citizens that double taxation is not permitted under the terms of the Constitution. In reality there is nothing in the Constitution which relates to this practice at all. For many years double, triple, and even more burdensome taxes have been levied upon the same property, despite all of the complaints that have been raised. There has been an attempt on the part of certain associations to ameliorate the situation, which at times has worked great hardship. For example, Arthur Reeves, deriving his income from a business situated in Wisconsin and himself a legal resident of Massachusetts and a citizen of the United States, spends enough of his time every year at his ranch in Mexico to come under the tax laws of that country. He has to pay a tax in Wisconsin because the profits are earned there; Massachusetts and the national government of course expect their share because of legal residence and citizenship; while Mexico requires everyone living six months of the year in that country to pay income taxes there. The result is quadruple taxation on the same income, which under present tax rates might leave very little, if any, of the original income for the use of the owner. While some progress was being made in obviating the worst of the hardships accruing under multiple taxation prior to World War II, at present the exigency is so pressing that almost everything is being forgotten in the search for additional revenue.

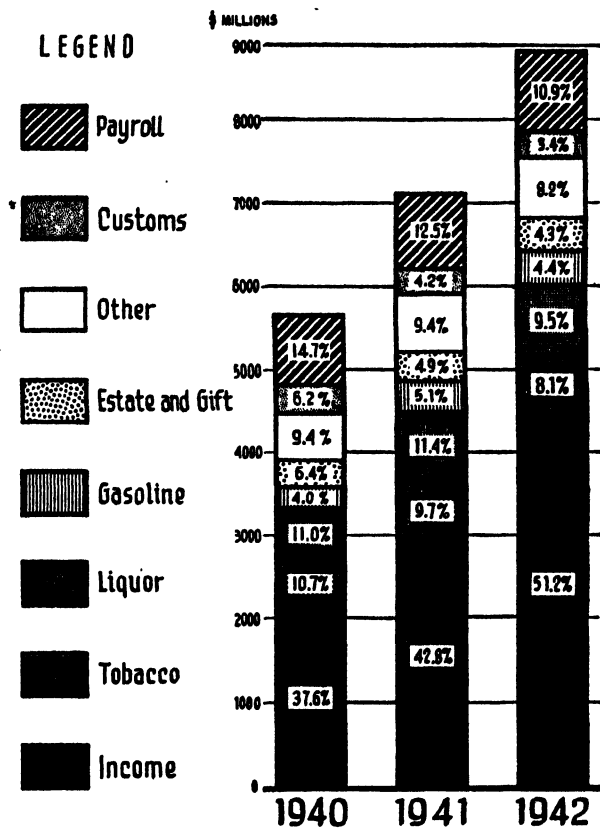
**Double
Taxation
not Pro-
hibited**

THE CURRENT TAX SYSTEM

It has been pointed out above that Congress has not seen fit to levy direct taxes since the Civil War period, unless the income tax be put into that category. In general, there has been a definite effort on the part of the federal authorities to collect revenues which are not always fully apparent to those who pay them. That is not to say that there is any particular secrecy about the taxes levied, but the form is such that the average citizen has a vague idea of what is tax and what is the price of the merchandise. Aside from the income taxes, estate taxes, and a few other levies, the taxes imposed by the

**Indirect
Emphasis**

The Tax Side Of The Federal Budget 1940-1942



Prepared by the FEDERATION OF TAX ADMINISTRATORS from the President's Budget Message

Barton

FIG. 5

national government have been collected at their source rather than from the person who finally pays them. Thus tobacco excises are paid in the first place by the companies which manufacture cigarettes and cigars, but they are not actually borne by those companies, being passed on to the smoker, who may or may not realize that approximately half of what he pays for a pack of cigarettes goes to the national treasury.¹ Similarly, a purchaser of an automobile frequently has a very vague notion of how much of what he pays for a car represents a tax levied by the national government. Income taxes are, of course, paid directly, but the great mass of the people have not been asked to assume these taxes because of exemptions which have been permitted. The result has been that while an average man may groan over the local general property taxes he has had little realization that he was actually shouldering an even heavier burden of federal taxes.

Advocates of economy in government maintain that it is positively vicious to hide or disguise so many of the federal tax exactions. They declare that citizens will favor all sorts of extravagances if they figure that someone else is paying for them, but that if they know that they themselves have to pay for what the government undertakes, there will be far greater caution and responsibility. They point to the generous amounts expended on veterans' pensions, agricultural subsidies, pork barrels, and various other items,² at the same time declaring that the American people would be far less generously inclined if they realized that they were paying for these out of their own pockets. Public officials, on the other hand, shy away from letting the people know what is exacted from them in the form of taxes because they believe that it is not politically expedient. If the people are not aware of what is being extracted, these officials reason, no resentment is likely to be aroused which will finally hit Congress.³ During the years when expenditures were reasonably modest and the proportion of the national income going for taxes was correspondingly low, the problem of tax consciousness was not a very pressing one. However, as expenses have soared and taxes have increased, though by no means as rapidly because of the deficit-financing, the situation has become aggravated, until many thoughtful people are

**Should Tax
Conscious-
ness Be
Stressed?**

¹ In those states which collect a tax on cigarettes this statement may not be accurate.

² Proposals to spend approximately \$1,000,000,000 for rivers and harbors have been recommended, for example, in 1942, despite the tremendous demands of national defense.

³ However, a number of Congressmen favored a general sales tax as a national defense measure in 1942 and it was the Treasury Department which objected.

of the opinion that tax consciousness on the part of the rank and file of the people is of the highest importance. If uncontrolled inflation is to be warded off and widespread suffering prevented, definite steps must be taken toward inculcating financial responsibility in the minds of the people.

For many years income taxes have ordinarily stood first on the list of federal revenues, though the exact amount produced has varied widely from time to time. During the depth of the depression the receipts of this tax reached a point below \$1,000,-
Income Taxes
 000,000, whereas in 1940 they exceeded \$2,000,000,000, and in 1941 amounted to about \$3,500,000,000.¹ With the reduced exemptions and heavier surtaxes authorized in 1941, the revenue from this source is expected to jump sharply to a point in excess of \$7,000,000,000 in 1942 and possibly \$11,000,000,000 in 1943.² Income taxes levied by the national government are of the net variety and apply to both individuals and corporations; they are regarded as perhaps the most equitable of all taxes because they are based on annual net income.

Prior to 1941 single persons were permitted an exemption of \$1,000 and married persons or heads of families an exemption of \$2,500; an additional exemption of \$400 for each dependent child under eighteen years of age and for dependent aged persons was given. Several million people had to pay an income tax despite these rather generous exemptions, but the majority of those gainfully employed were not affected. The financial problems brought on by the national defense program convinced many informed people that the tax basis should be broadened so that large numbers of other persons would be brought under the income tax. Not only would additional revenue be forthcoming, but a more responsible attitude was predicted. So in the fall of 1941 Congress passed a retroactive law effective as of January 1, 1941, which reduced exemptions to \$750 in the case of single persons and \$1,500 in the case of heads of families, leaving the \$400 exemption for each dependent unchanged.³
Broadening the Income-tax Base
 The Treasury Department estimated that some twenty-two million

¹ In 1940 the actual receipts in millions amounted to \$2,125,000,000; in 1941 the amount was \$3,470,000,000.

² The budgetary message of the President sent to Congress on January 7, 1942, estimated 1942 fiscal year receipts as amounting to \$7,147,000,000 and 1943 receipts as \$11,316,000,000.

³ Proposals are pending in 1942 to reduce the exemption even further—perhaps to \$1,000 for heads of families and \$500 for single persons. However, the Treasury Department opposes this step.

persons would have to file income-tax returns under this new act, or about five million more than in 1940. To assist these numerous small-income taxpayers a novel system was devised which permits computation on the basis of a printed table rather than on the basis of detailed consideration of charitable contributions, tax deductions, etc.

Both individuals and corporations are assessed normal income taxes and in those cases where incomes exceed a given amount they must also

Surtaxes assume surtaxes which are steeply progressive in character.

Because of the national emergency beginning in 1941 even the lowest taxpayers have to shoulder a special surtax in addition to their normal payment; ¹ for example on the first \$2,000 of net taxable income the 1941 rate was 4 per cent of tax and 6 per cent of surtax, or a total of 10 per cent. The surtax rose to 9 per cent on the next \$2,000, then to 13 per cent; it became 50 per cent where the net taxable income amounted to from \$32,000 to \$38,000 and finally reached a top of 77 per cent in the case of incomes of over \$5,000,000. There is a considerable difference of opinion as to the fairness of the surtaxes, with some claiming that the higher income brackets are dealt with too severely and others maintaining that the lower brackets should be taxed more heavily. With the requirements so vast, it is altogether probable that the smaller income will have to pay additional taxes, either through an increase in basic rate, a hiking of the surtax, or possibly through a general pay-roll tax which will supplement the ordinary income tax. In 1942 the Treasury Department proposed rates on personal incomes in the brackets up to \$30,000 which were approximately double those in effect.

In the old days when large numbers of persons did not have to pay an income tax at all or even make a report on their incomes, it was

Computing an Income Tax not particularly essential that students have an understanding of how income taxes are computed. Inasmuch as virtually all of them will have to pay these taxes in the future, it

is perhaps well to refer briefly to the process of computation, though the simplified process ² devised by the Treasury, which has been referred to above, may relieve the situation. If an income tax is of the gross variety, computation is simple because one merely subtracts the exemption from all that comes in and pays a tax accordingly. But the net

¹ Those rates may be increased on 1943 income-tax payments.

² This applies where incomes do not exceed \$3000.

income tax presents more difficulties. In the first place, the taxpayer is permitted to deduct the expenses incident to doing business or carrying on a profession; thus he subtracts from his gross receipts the cost of merchandise, the rental of a store or office, the wages paid to help, insurance on stock, the cost of delivery services, and so forth. In addition, it is possible to deduct most taxes paid to state and local governments (general property taxes, license taxes, poll taxes, income taxes, and some sales taxes), though with rare exceptions federal tax payments are not deductible. Charitable contributions up to 15 per cent of total net income may be deducted; interest on indebtedness also may be subtracted. On earned income (salaries, wages, and payments for personal services) a 10 per cent credit is allowed against the normal 4 per cent tax but not on surtaxes.¹ The amount arrived at after these deductions have been made is the net income. The net taxable income is that amount left after the exemptions for dependents, heads of families, and individuals have been deducted. The taxpayer then proceeds to compute the tax according to the tables available in any internal revenue office, post office, or Treasury circular, and begins paying the tax the fifteenth of the following March in four quarterly installments.

In addition to personal income taxes the national government provides for the taxation of the incomes of corporations, though this is resented by some of those who, as recipients of dividends, are obliged to pay a second time on these earnings. In 1941 **Corporate Income Taxes** normal rates of 15, 17, and 19 per cent were assessed against corporate net incomes of \$5,000, \$5,000-\$20,000, and \$20,000-\$25,000 respectively, while 24 per cent was exacted in the case of net incomes exceeding \$25,000. In addition, a surtax of 6 per cent was levied on the first \$25,000 of net corporate income and 7 per cent on amounts in excess of that sum. Excess profits tax rates supplemented these ordinary rates as a wartime measure, ranging from 35 per cent on the first \$20,000 to 60 per cent on amounts over \$500,000. In its attempt to add to the national revenues the Treasury Department urged drastic increases in these taxes in 1942, with normal rates remaining unchanged but surtaxes jumped to 16 and 31 per cent and excess profits rates to a minimum of 50 per cent and a maximum of 75 per cent.²

¹ In 1942 the Treasury Department recommended the dropping of this credit.

² It may be added that some people advocate excess profits taxes of one hundred per cent on the ground that corporations should not be permitted to profit from the national defense program.

The receipts derived from miscellaneous internal revenue supplement those which come in from income taxes; thus in 1940 more than \$2,125,000,000 was realized from these sources, while in 1941 almost \$3,000,000,000¹ came in, with subsequent collections expected to reach much higher levels.² Here there are estate taxes which begin at 3 per cent after an exemption of \$40,000 and rise to 70 per cent on estates of more than \$10,000,000³ and gift taxes which are about 75 per cent as high. Under the 1941 act whiskey was taxed at \$4.00 per gallon; gambling machines at \$50 per year; automobile users at \$5.00 per year for each automobile. Local telephone bills had to add a tax of 6 per cent, while long-distance calls, telegrams, radio, and cable messages were taxed 10 per cent. Automobiles were down for an excise tax of 7 per cent, while photographic equipment, sporting goods, electrical appliances, toilet preparations, refrigerators, jewelry, furs, and many other items had to pay 10 per cent.⁴

A good many people would like to see a general sales tax levied by the national government because they believe that this would go far in the direction of bringing the tax burden home to every citizen. As it is, there are numerous excise taxes which are more or less sales taxes, but they are usually included in the retail price and hence are not always apparent to the purchaser. A straight sales tax of 3 per cent or so would bring in large sums of money and would serve notice on the purchaser that he is helping meet federal expenses; moreover it would take in virtually all people. However, such a tax is not regarded with enthusiasm by the politicians because it irritates large numbers of people. Furthermore, there is the vigorous opposition of organized labor which maintains that such a tax falls too heavily on the small wage earner because so large a proportion of his income goes for food, clothing, and other items on which there is a sales tax. President Roosevelt stated in 1941 that he was opposed to a general sales tax, though he desired to curb expenditures for consumer goods and avoid uncontrolled inflation. In his budgetary message of

¹ The exact amounts were: \$2,345,000,000 in 1940 and \$2,954,553,332 in 1941.

² Miscellaneous internal revenue is estimated at \$3,862,965,000 in 1942 and \$4,206,467,000 in 1943. See President's budgetary message for 1942.

³ Forty-seven states have estate taxes and the federal law permits a certain credit against federal tax in these cases. The rates noted above were those in effect early in 1942. The Treasury Department on March 3, 1942, recommended substantial increases, though an initial exemption of \$60,000. See the *New York Times*, March 4, 1942.

⁴ In 1942 the Treasury Department proposed increases in these rates aimed at raising an additional \$1,300,000,000 in revenue.

1942 he declared that he was opposed in principle to such a tax, but admitted that the national emergency might make a general sales tax imperative as a temporary expedient. It would appear that one of the best ways to discourage the purchase of luxuries would be to levy heavy sales taxes of 25, 33⅓, and even 50 per cent, as is done in England and Japan on such articles. Needless to say, this could be done without a general sales tax on food and clothing which would fall heavily on those whose incomes may already be inadequate to purchase necessities.

While the receipts of most taxes have increased, often even doubling or tripling, the income from customs has declined during recent years.¹ Trade with most foreign countries has been drastically reduced and in certain cases abandoned entirely; reciprocal trade agreements have cut import duties to a lower rate in many instances. Hence, though customs receipts once were one of the major sources of federal income, they now occupy a comparatively minor position on the list. In 1940 and 1941 customs duties brought in scarcely 5 per cent of total revenues,² while of the some \$12,000,000,000 of revenues estimated for 1942 it is calculated that only \$368,000,000, or slightly more than 3 per cent, will come from this source.

Since the enactment of the social security legislation increasingly large amounts have flowed into the treasury in the form of social security taxes paid by employees and employers.³ In 1940 more than \$700,000,000 and in 1941 almost \$800,000,000 was realized through social security pay-roll and excise taxes.⁴ Some of this money was used to pay benefits under the social security program, but the greater part, not being required when benefits are low, has been invested in government bonds. Critics of the Treasury complain bitterly at using these funds to take care of deficits, maintaining that the amounts collected should be carefully preserved until they are needed. But the maximum load on the system is not expected to be reached until 1970 or so and in the meantime it is maintained by the Treasury that government bonds are as safe as any investment. While some complain at the use of the social security funds, others advocate a still further increase in rate in order to syphon off increased purchasing power brought about by wage increases; President F. D.

¹ The decrease has not necessarily been steady every year.

² The exact amounts in millions were: in 1940, \$349,000,000; in 1941, \$392,000,000.

³ See Chap. 31 above.

⁴ The exact amounts in millions were: 1940, \$712,000,000; 1941, \$788,000,000. In 1942 receipts are estimated to reach \$1,018,000,000.

Roosevelt recommended in 1942 that Congress add \$2,000,000,000 per year to these taxes.

Despite the heavy taxes which are levied, expenditures have exceeded revenues by a substantial margin for more than ten years. Total **Recurring** receipts aggregated almost \$6,000,000,000 in 1940 and more **Deficits** than \$8,000,000,000 ¹ in 1941 and were expected to run to more than \$12,000,000,000 and \$17,000,000,000 in 1942 and 1943 respectively. Nevertheless, there were deficits of more than \$3,500,000,000 and \$5,000,000,000 respectively in 1940 and 1941 ² and, despite considerable increases in revenues in the fiscal years of 1942 and 1943, deficits of more than \$18,000,000,000 and \$41,000,000,000 were forecast for those years.³

THE TREASURY DEPARTMENT

The collection of the revenues of the United States, the custody of funds, and the paying of bills is entrusted to the Treasury Department, which is one of the departments first set up in 1789. Today this department is one of the largest departments in point of staff and its head ranks second only to the Secretary of State in the cabinet. A sizable building east of the White House is given over entirely to the Treasury, but this has long since been inadequate to house the Washington staff. Much of the actual work is done in the various districts into which the United States is divided for fiscal administration, with the result that the Treasury staff is widely scattered throughout the country.

The revenue received by the United States is collected in the main by two large services: the Bureau of Internal Revenue ⁴ and the Customs Service.⁵ Every state has at least one collector of **Collection of the Revenue** internal revenue who is assisted nowadays by large numbers of deputies and office workers. Income taxes, inheritance taxes, excise taxes, liquor and tobacco imposts, amusement taxes, old-

¹ The exact amounts in millions were: 1940, \$5,925,000,000; in 1941, \$8,268,000,000. These are total receipts. Net receipts which are arrived at by deducting the net appropriations for old-age and survivors insurance trust fund were: 1940, \$5,387,000,000; 1941, \$7,607,000,000.

² The exact deficits in millions were as follows: 1940, \$3,611,000,000; in 1941, \$5,103,000,000.

³ Estimated deficits in these years are as follows: 1942, \$18,631,803,162; 1943, \$41,175,792,300. See the President's budgetary message of 1942.

⁴ For a detailed treatment of this bureau, see L. F. Schmeckebier and F. X. A. Eble, "The Bureau of Internal Revenue," *Service Monograph* 25, Brookings Institution, Washington, 1923.

⁵ See L. F. Schmeckebier, "The Customs Service," *Service Monograph* 33, Brookings Institution, Washington, 1924.

age and survivors pay-roll taxes, and a host of other federal exactions are paid into these district offices rather than directly into the Treasury at Washington. In a similar fashion the United States is divided into districts for the collection of customs, though the number of subdivisions is not so large. It might be supposed that all customs duties would be collected at such ports as New York, San Francisco, and New Orleans, and a large portion of such levies are. However, imports may be sent under bond to interior points and the customs duties collected at those places by the local collectors of customs.

After the collectors of internal revenue and customs receive the revenues payable the United States, they deposit them to the credit of the United States in approved banks and in the twelve Federal reserve banks. They are paid out by these depositories upon presentation of federal checks which are made out by the disbursing section of the Treasury Department on the authorization of the Comptroller-General's office. Ordinary funds are, therefore, not gathered together in Washington at all. In addition to current funds, the Treasury, of course, has to keep billions of dollars of gold and silver which are owned by the United States. Vaults for the storage of gold have been constructed by the Treasury in Kentucky and Colorado and a similar storage place for silver bullion is located at West Point, New York.

One of the chief functions of the Treasury Department in Washington is to keep the complicated records of the receipts and disbursements of the United States. Prior to 1940 the Treasury maintained ten divisions which handled various fiscal matters, but these were consolidated by reorganization Plan 3 into a coordinated Fiscal Service, headed by an assistant secretary. At present this service is divided into three subdivisions: Office of the Treasurer of the United States, Bureau of Public Debt, and Bureau of Accounts, the last of which is entrusted with the large amount of work having to do with financial records and accounts.

THE GENERAL ACCOUNTING OFFICE

The Treasury Department collects, has custody of, and disburses federal funds, but it is dependent upon the General Accounting Office which was set up by Congress to check the receipts and expenditures of the United States. This office is directed by a Comptroller General who is appointed by the President with the consent of the Senate for a term

of fifteen years and is removable only by joint resolution of Congress or in extreme cases by impeachment.

The General Accounting Office performs several important functions which are of interest to students of American government. Congress, as we have noted, authorizes expenditures by passing appropriation acts, but the actual expenditures are made by the various agencies of the government which employ workers, purchase supplies, and make capital outlays. After these spending agencies have drawn up forms which certify that personal service has been performed or supplies furnished, the General Accounting Office has to examine the claims to ascertain whether they are authorized by Congress. This work is done quite meticulously, though in order to expedite payments it may be some time after money has been paid out that errors are discovered. Almost any federal employee who travels for the government has experienced the sharp eye of this office, for only valid items are approved and if a mistake is made it is not uncommon to have requests months or even years after for refunds. The financial records of the various departments are regularly checked by agents of this office for purposes of audit, while the accounts of the collectors of internal revenue and customs are inspected to see that revenues have been properly collected and handled. Regular reports are made on the financial state of the nation to Congress.

With the Comptroller General appointed for a term of fifteen years and removable only by Congress, it is more or less natural that considerable autonomy should be enjoyed by the General Accounting Office. President F. D. Roosevelt found himself in conflict with this agency shortly after he assumed office and in 1937 placed himself definitely on record as being dissatisfied with the system. The Comptroller General at that time, a gentleman by the name of McCarl, was a holdover from the Republican era and had scant sympathy for the pump-priming policy of the New Deal. While he could not say what money should be spent for, he did question many expenditures proposed by various of the newer agencies on the ground that they were not within the appropriations made by Congress. Moreover, he severely criticized some of the financial practices of the government departments, including the Tennessee Valley Authority. President Roosevelt maintained that the Comptroller General should be responsible to the chief executive and removable by him and this course was recommended by the President's Committee

on Administrative Management. When the President submitted his scheme for a reorganization of the administrative setup to Congress, this item was included and led to widespread discussion which reached the impassioned level both in Congress and throughout the country. It was maintained by the New Dealers that it was intolerable to have a single official, such as the Comptroller General, able to hold up important projects of the various departments and that every part of the government should work under the policy laid down by the President. Opponents of this point of view asserted that the Comptroller General represented the chief protection of the people against dictatorship and that it would be the height of folly to place this official under the President. Congress finally refused to carry out the wishes of the President, but the term of Mr. McCarl soon expired and Franklin D. Roosevelt handled the situation by allowing the position to remain vacant for a time and then appointing a person whom he felt he could trust to the office. Consequently the tempest which once raged has died down, and the relations between the General Accounting Office and the other departments and offices are now reasonably normal. The problem presented by the legal status of the Comptroller General is a difficult one which has several angles. It is, of course, irritating to a chief executive to have his program interfered with by a financial officer who is unknown to large numbers of people. Yet there are arguments for placing such an official in a position where he is at least reasonably independent of executive control, since he is supposed to check the financial practices of the executive departments.¹

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CHAPTER XXVI

NATIONAL EXPENDITURES

AS POPULATIONS increase governments find it necessary to expend larger and larger sums, which are out of all proportion in most cases to the rate of population growth. Old functions become more complicated and require more elaborate machinery staffed by greatly enlarged numbers of public employees. Congestion brings in its wake new problems which more often than not are such that the government must step in. Rising standards of living are quite naturally accompanied by the expectation that the government will furnish addi-

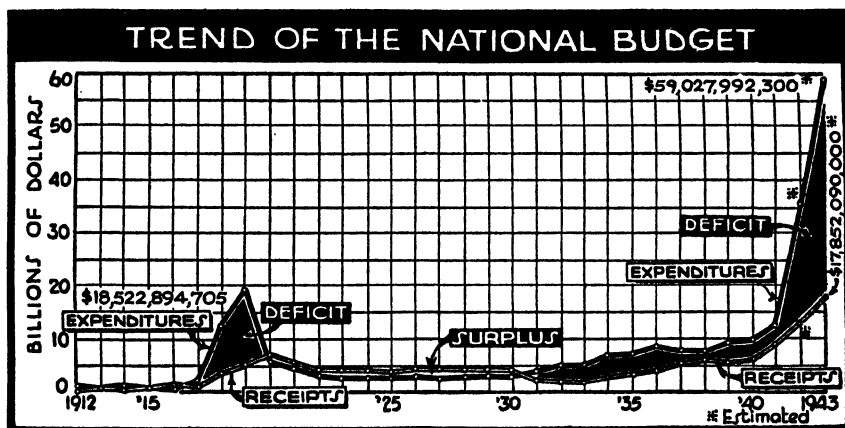


FIG. 6 Prepared by the *New York Times*.

tional services or improve the quality of those long rendered. A national emergency, either brought on by internal depression or international threats, leads to the expenditure of vast sums of public funds for relieving distress or preparing for national defense. Thus, like the poor which are always with us, the necessity of public expenditure remains constant, though the exact amounts required may vary a great deal from time to time.

Unlike private persons or businesses, the government must spend large sums of money whether it has adequate receipts or not. Private persons and businesses would find their credit exhausted and face bankruptcy if year after year they paid out far more than their income.

Governments not only sometimes spend a great deal more than they take in—in the case of the United States for an unbroken stretch of a decade—but they often even increase their expenditures at a time when income is drastically reduced. Public credit places a strong government in a preferred position in this matter; moreover, when national income is cut governments are almost invariably called upon to assume in addition to their regular duties large burdens of relief, pump-priming, and other activities of an extraordinary nature.

It would be utterly impossible for one who had not been in contact with the United States during the last third of a century to conceive of the heights to which public expenditures have risen. In their wildest dreams the founders of the Republic could never have foreseen a time when the national government would find it expedient to pay out even a fraction of contemporary appropriations. As a matter of fact, recent expenditures have reached such proportions that the ordinary citizen has little inkling of the amounts involved, for he has nothing in his background which enables him to conceive of what \$10,000,000,000, \$15,000,000,000, or even \$60,000,000,000 actually is.

It was not until shortly before World War I that the national expenditures reached the point of totaling \$1,000,000,000 in a single year. The Congress which first authorized the expenditure of public funds aggregating \$1,000,000,000 received a great deal of publicity as a "billion-dollar Congress." Now that amount strikes the public as being too insignificant and humiliating to mention. It is almost as if a sybarite, spending money right and left in the most lavish fashion, were to refer to the days when he lived in the utmost penury in the "third-floor back" of a run-down boarding house. From 1930 to 1936 the expenditures of the national government increased from just under \$4,000,000,000 per year to more than \$9,000,000,000. Then in 1937 there was a small drop to just over \$8,000,000,000, but this was followed by steady increases, until in the fiscal year of 1941 they reached \$12,710,000,000. In 1942 it is expected that \$30,000,000,000 or more will be paid out, while in 1943 the phenomenal sum of \$59,000,000,000 is proposed.¹ Per capita cost averaged \$5.26 during the years 1789-1913; it arose to \$64.55 during the three years 1933-1936; and it will probably exceed \$400 in 1943!

¹ Total expenditures of \$30,675,796,162 are estimated for 1942 and \$59,027,992,300 for 1943. See the President's budgetary message of 1942.

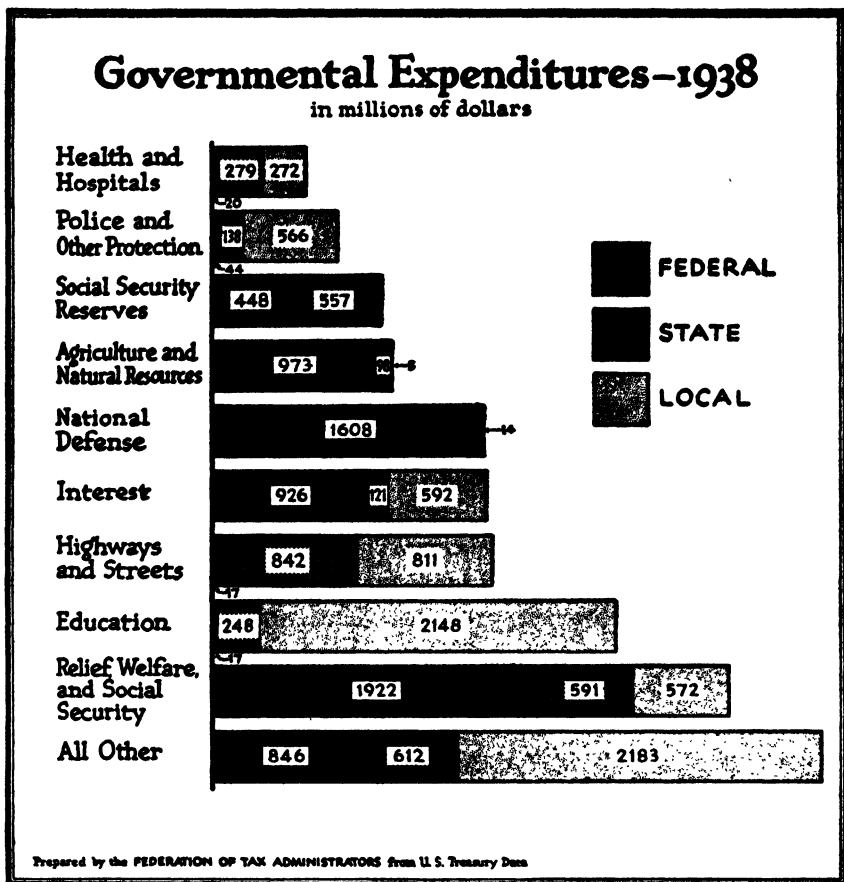


FIG. 7. A chart showing the expenditures of all governments in the United States prior to the National Defense Program.

WHERE THE MONEY GOES

The traditional functions of the national government are hardly inexpensive, but they account for a comparatively small proportion of the total expenditures. Despite the handsome treatment which it accords to itself, Congress is responsible for the expenditure of only approximately \$25,000,000 each year.¹ The executive office of the President has expanded until the chief executives of a few years ago would scarcely be able to find their

**Legislative,
Executive,
and Ju-
dicial Ex-
penditures**

¹ The actual cost for the fiscal year of 1941 was \$24,172,235. Estimates for the fiscal year of 1942 run to \$25,494,800.

way around; yet even so it costs the country only \$3,000,000 or \$4,000,000 annually.¹ The elaborate system of federal courts, including the Supreme Court itself, necessitate the paying out of something like \$12,000,000 each year.² In other words, the total cost of the legislative, executive, and judicial branches of the government runs to only about \$40,000,000³ out of a total of \$10,000,000,000, \$15,000,000,000, or even \$60,000,000,000!

The ordinary administrative agencies account for a far larger sum than the legislative, executive, and judicial branches, but even so they are not responsible for any major part of the outlay. The Department of State handles its important work and maintains a far-flung foreign service on something like \$20,000,000 a year.⁴ The Department of Labor manages to get along rather well on a little more than half of the modest sum received by the Department of State.⁵ Commerce, including Civil Aeronautics, accounts for \$70,000,000 or so;⁶ Justice receives somewhat over \$50,000,000;⁷ Interior is down for less than \$80,000,000;⁸ and Agriculture varies from \$100,000,000 to \$200,000,000 per year.⁹ The Treasury exclusive of the Coast Guard costs \$150,000,000 or so;¹⁰ the deficiency in the Post-office Department a varying number of millions;¹¹ and the nonmilitary activities of the War Department another \$50,000,000.¹² The new Federal Security Agency is down for slightly over \$50,000,000;¹³ the Public Works Agency for somewhat over \$30,000,000.¹⁴ The other independent establishments account for an aggregate of \$70,000,000 or \$80,000,000.¹⁵ In other words, the total cost of civil departments and agencies falls short of \$1,000,000,000.¹⁶

¹ This office received \$2,899,564 in 1941 and is down for \$3,523,500 in 1942.

² The exact amount was \$11,425,848 in 1941; the estimate \$12,311,000 in 1942.

³ The total was \$38,497,649 in 1941; the estimate \$41,329,300 in 1942.

⁴ Exact amount in 1941, \$20,443,140; estimated 1942, \$21,852,600.

⁵ Exact amount in 1941, \$12,225,818; estimated 1942, \$12,345,000.

⁶ Exact amount in 1941, \$71,308,719; estimated 1942, \$73,185,600.

⁷ Exact amount in 1941, \$56,702,470; estimated 1942, \$58,716,000.

⁸ Exact amount in 1941, \$78,685,940; estimated 1942, \$76,601,300.

⁹ Exact amount in 1941, \$129,117,728; estimated 1942, \$128,050,000; but in 1940, \$184,466,492.

¹⁰ Exact amount in 1941, \$125,090,651; estimated 1942, \$149,663,600.

¹¹ Exact amount in 1941, \$30,130,553; estimated 1942, \$14,000,000.

¹² Exact amount in 1941, \$49,514,984; estimated 1942, \$46,049,000.

¹³ Exact amount in 1941, \$53,158,969; estimated 1942, \$59,112,100.

¹⁴ Exact amount in 1941, \$31,654,175; estimated 1942, \$44,818,000.

¹⁵ Exact amount in 1941, \$65,769,698; estimated 1942, \$74,460,600.

¹⁶ Exact amount in 1941, \$782,456,994; estimated 1942, \$844,470,700.

The cost of national defense, including pensions for veterans of past wars, interest on debt incurred during previous periods of intense activity in preparing for defense, and the maintenance of **National Defense** armed forces, has long been heavy. Various estimates, based on calculations as to how much of the national debt could be fairly charged to defense and other somewhat vague items, have placed the proportion of national expenditures devoted to this purpose at well over half. Indeed one of the main arguments for disarmament advanced in the 1920's was the tremendous expense involved and the far-reaching improvements in education, health, and general public welfare which could be made with the money saved. Direct expenditures for national defense mounted from \$1,559,000,000 in the fiscal year of 1940 to \$6,301,043,165 during the fiscal year of 1941. Inasmuch as the national defense program had only got well under way ¹ prior to June 30, 1941, this amount, large as it may seem, is slight in comparison with the spending of 1942 and 1943, when totals are expected to amount to \$23,996,525,400 and \$52,786,186,000 respectively.

Many of the projects which have been undertaken by the national government since 1933 involve very large sums of money. Aids to agriculture alone accounted for \$1,094,203,136 in 1941; gen- **Other Expenses** eral public works cost \$573,056,675; the C.C.C. camps ran to \$257,000,000; the N.Y.A. to \$89,000,000; W.P.A. to \$1,285,000,000; and P.W.A. to \$140,000,000. Older activities which antedate the New Deal are also responsible for large sums of money. Federal grants to states for road building ran to \$174,000,000 in 1941; the Veterans' Administration had to have \$559,000,000 for its work; reclamation projects demanded \$86,000,000; while river and harbor work and flood control required \$219,000,000. Interest on the public debt, despite an all-time low in interest rates, ² called for the paying out of \$1,111,000,000 in 1941.

Despite the general apathy as far as federal finances are concerned, there are always voices in the wilderness calling for economy. Even when money was being poured out as never before to carry **Economy in Government** forward the national defense program, there were those who lifted their voices to plead for reductions in other fields. It is easy to urge economy in government, but it is far from easy to effect

¹ Large authorizations had been made, but the projects were not sufficiently advanced by the end of the 1941 fiscal year to require the payment of the sums appropriated.

² The interest rate on the entire indebtedness averaged 2.518 per cent in 1941 in comparison with 2.583 per cent a year earlier.

that economy. When the War Department asked for approximately \$1,000,000,000 for tank reserves in 1941, Congress was not disposed to honor the request until public opinion indicated that economy was not to be the watchword in that field.¹ Interest is fixed and cannot be reduced much beyond its present low mark. If everything were taken from the legislative, executive, and judicial branches, it would amount to less than a drop in the bucket. The ordinary civil agencies may seem to spend freely—certainly \$800,000,000 or \$900,000,000 is not to be disregarded—but it is questionable how severely their staffs could be pruned without serious embarrassment or their supplies reduced enough to bring about important savings. That is not to say that it might not be worth while to conduct a careful survey of the situation and that reasonably substantial economies might not be effected. But no anticipations of large savings should be built around these traditional agencies.

This means that the principal field remaining is that involving subsidies to farmers, work relief, social security, pensions, and public works. Work relief alone even after employment had been substantially improved consumed approximately twice as much public money in 1941 as all of the civil departments combined, while agricultural aid programs required considerably more than an equal amount. Veterans' pensions reached \$500,000,000. The combined social security program necessitated the expenditure in 1941 of another billion dollars in round numbers. If all of these items were to be dropped, enormous savings could, of course, be effected—even if some of them could be abandoned or severely pruned consequential economy would result. But which ones are to be selected as victims? The farmers complain that even as it is they receive less than their share of the national income. Veterans point to their patriotism and anticipate more, not less, in the way of government aid. Motorists, business men, and farmers want good highways. The social security program might be adjusted to omit the C.C.C., although these camps have very strong supporters, and N.Y.A., despite the howl that youth would raise.² However, the United States was very slow in getting started on old-age security and child-welfare programs and any saving

¹ See the files of the *New York Times* for August, 1941, for reports on this bill in its last stages.

² Both C.C.C. and N.Y.A. were omitted from the budget for 1943 submitted by the President to Congress, but an item of \$100,000,000 for an emergency youth program was substituted.

realized by dropping those activities would be doubtful wisdom. With the increasing demand for a health and educational program financed by the national government, there may be some reason to believe that the amounts expended for these services will even increase.

At any rate it can hardly be disputed that a substantial economy achievement would require considerable courage on the part of a Congress and President, for the interests affected would move heaven and earth to protect themselves. As long as large numbers of persons, both within and without the government, look upon public finance as largely a matter of bookkeeping, it is not probable that there will be adequate support for genuine economy. In 1941 Congress got to the point of setting up a joint committee on non-essential expenditures ¹ and the Bureau of the Budget prepared a table showing where cuts of \$1,000,000,000, \$1,500,000,000, and \$2,000,000,000 could be made. Moreover, the President submitted a 1943 Budget to Congress which involved a reduction of approximately \$1,000,000,000 in expenditures exclusive of direct war purposes and debt charges.²

POSSIBLE NONDEFENSE CUTS

(Figures in millions of dollars)

Activity	Estimate of Appropriations in 1942 Budget	Estimated Expenditures in 1942 Budget	Actual Appropriations to Oct. 5, 1941 (a)	Revised Estimate of Expenditures, 1942 (Oct. 5, 1941)	Expenditures (b) Under Hypothetical Cuts of		
					\$1,000,-000,000	\$1,500,-000,000	\$2,000,-000,000
Legislative, judicial, and executive.	43	41	41	39	41	41	41
Civil departments and agencies. . . .	807	833	880	823	755	730	700
General public works program. . . .	450	533	623	620	478	447	427
Veterans' pensions and benefits. . . .	575	564	575	566	552	551	550
Aids to agriculture.	915	1,061	1,101	1,155	758	593	578
Aids to youth.	372	363	339	290	178	118	19
Social security.	473	463	467	468	460	457	412
Work relief.	995	1,034	886	940	707	524	270
Refunds.	82	89	82	87	89	89	89
Interest on the public debt.	1,225	1,225	1,275	1,275	1,225	1,225	1,225
Transfers to trust accounts.	274	275	274	268	263	256	245
Supplemental items—regular.	100	100	50	50	75	50	25
Total, excluding debt retirement. . .	6,311	6,581	6,593	6,581	5,581	5,081	4,581

(a) Includes supplemental estimates pending before Congress, Oct. 5, 1941, and an estimate of further supplementals to be transmitted.

(b) Under budget estimates of expenditures (Col. 2).

¹ This committee had as chairman Senator Byrd and as vice-chairman Representative Doughton. Its preliminary reports anticipated savings of more than \$1,000,000,000.

² However, the President left W.P.A. appropriations to be taken up at a later time and this may reduce the apparent cut.

THE NATIONAL DEBT

The enormous deficits in the last decade of federal financing have contributed to a national debt which, after passing all previous high-water marks, continues to soar. Prior to World War I the United States owed only about \$1,000,000,000 which was negligible considering the resources of the country. What seemed at the time an unprecedented pouring out of public funds built this nominal sum up to

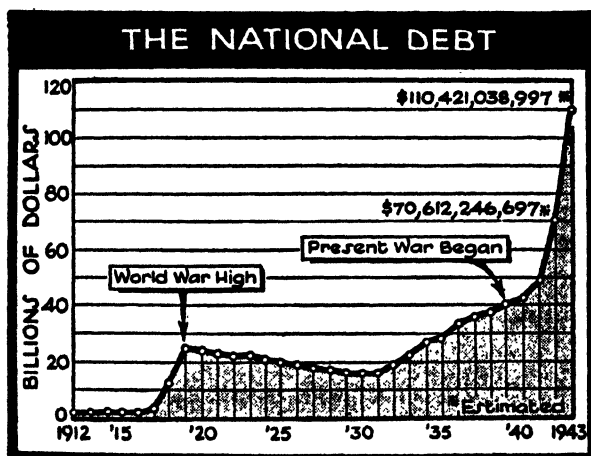


FIG. 8. Prepared by the *New York Times*.

\$25,000,000,000 at the close of the war. The government attempted to retire as much of the debt as possible during the 1920's, so that by 1930 the total only slightly exceeded \$16,000,000,000.¹ The closing months of the Hoover administration saw revenues fall off sharply and the debt began to rise. The New Deal program did little to increase the national revenues, but did assist materially in adding to the indebtedness. When the national defense program began to operate, the debt stood just under \$45,000,000,000, which Congress had by law fixed as a maximum. With considerable reluctance Congress was led by the demands of the emergency to raise the maximum to \$65,000,000,000, which it was estimated would be quite adequate. Even before the declaration of war in 1941 the \$50,000,000,000 mark had been passed and commitments were being made almost daily which would add substantially to the debt within a few months. The \$100,000,000,000 debt level may be exceeded in 1943. Early in 1942 Congress lifted the debt limit to \$125,000,000,000.

¹ The lowest figure was \$16,185,308,299 in 1930. See statement of Treasury Department.

The question is often raised as to how high the national debt can be permitted to go without endangering the financial stability of the country. Unfortunately, there is no categorical answer, **How High Can the National Debt Safely Go?** much as we might like to have one for guidance. For a decade the rapidly soaring debt has occasioned great perturbation in many quarters, although it is fair to say that the majority of the people have apparently given little attention to the problem. Political orators have prophesied the almost immediate downfall of the country unless a halt were called: their rivals have told people that debt is a good thing for a nation and that in the last analysis it involves only bookkeeping transactions. We owe ourselves, the argument goes, so we have nothing to worry about. The most thoughtful people have found it impossible to agree on a safety limit. President Roosevelt once quoted an unnamed New York financier, who estimated for him that \$55,000,000,000 or \$60,000,000,000 might be considered the top. As the debt approached that point, Mr. Roosevelt conveniently discovered other authorities who advised him that \$75,000,000,000, \$80,000,000,000, or even \$90,000,000,000 might not occasion genuine danger. Calculating on one basis results in one maximum, while using different data produces another figure. The truth is that no one knows what the limit is. Unfortunately, it is probable that there is only one reliable method of ascertaining the upper limit: the method of experience; and it furnishes the information when it is too late to make any very great use of it.

It is often averred that we do not need to worry unduly about our national debt because we owe ourselves. This sounds comforting because if you owe yourself you are presumably always solvent **"We Owe Our-selves"** and can easily settle accounts by transferring assets to the credit column. Unfortunately the actual situation is far more complicated than it sounds. It is true that comparatively small amounts of our gigantic debt are owned by citizens of foreign countries. The greater part is held by banks, insurance companies, trust funds, and similar institutions. The deposits in commercial and savings banks and life insurance policies are secured to a considerable extent by government securities these companies have purchased. If the "bookkeeping method" be applied as advocated by those who say that we owe ourselves and hence do not need to worry about indebtedness, it means that the bank deposits and the life insurance policies cannot be paid because the securities which back them have proved worthless.

If everyone owned government bonds in equal amounts or according to their wealth, it would be possible to use cancellation, but even the most unsophisticated person knows that this is not the case. If bank savings and life insurance policies were held only by well-to-do people, it might be possible to cancel them without paralyzing the entire national economy—at least from the point of view of those who are anxious to distribute the wealth more widely. But life insurance

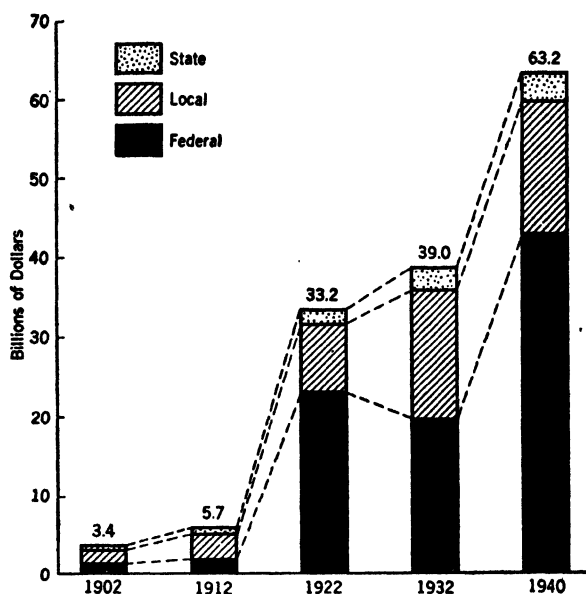


FIG. 9. Comparative National, State, and Local Debt, 1902-1940. Prepared by State and Local Government Division, Bureau of the Census.

policies, particularly, constitute the financial palladium of the rank and file of American citizens who have through the years saved their hard-earned money to protect their families and their own old ages. It may be argued that the social security program is adequate to provide for these needs and it may be that American psychology can be adjusted to that point of view. However, under the system of private capital, still basic in the United States despite the operations it has undergone, repudiation of the national debt would appear to be catastrophic in its results.

The Federal government uses at least two general types of financing: "long term" and "short term." The former refers to borrowing money by the sale of bonds with a life period of two or three or more decades. Short-term borrowing is employed to supplement the long-term bonds, sometimes because the market is not favorable

to the issuance of long-term bonds, sometimes to provide temporary financing, and again because the amount required is hardly large enough to warrant the issuing of formal bonds. Short-term borrowing uses notes, bills, and certificates of indebtedness which run from thirty or sixty days to a year or two years. When they mature, either more short-term securities or long-term bonds may be issued to provide money for their payment, or they may be retired through the use of current revenues. Long-term bonds are retired when they mature either by issuing new bonds to replace them or by full payment from sinking funds built up by contributions through the years. Federal bonds are frequently refunded before they mature since they contain a provision which permits the government to call them in for payment after a certain date. If interest rates are low at that time, it is more than likely that the Treasury will resort to refunding. During the past decade the United States has refunded on a very extensive scale, thus reducing interest rates from almost 4 per cent to about $2\frac{1}{2}$ per cent.¹

The Federal government issues both bearer bonds and registered bonds—the former may be sold by whoever holds them and are approximately as negotiable as currency, while the latter are registered at the Treasury in the name of their owner and cannot be disposed of without having ownership transferred. Although local governments have made extensive use of bonds which mature over a period of years rather than at one time, the Federal government has not seen fit to experiment with serial or “annuity” bonds, as they are called.

A report of the Treasury in August, 1941, showed that the total indebtedness amounted to \$50,087,335,656. Of this amount \$36,795,092,806 was in the form of Treasury bonds, \$9,169,889,500 in Treasury notes, \$2,352,000,000 in certificates of indebtedness, \$1,603,332,000 in Treasury bills, and \$167,021,350 in the form of matured obligations which no longer bore interest.²

During the years immediately preceding 1941 the Treasury made increasing use of United States Savings Bonds. These were sold at post offices and Federal reserve banks, registered in the names of their purchasers, nontaxable for the most part, payable in ten years, redeemable at any time with a reduction in interest rate, and bore a face value which included both principal and interest. Several billion dollars of these had been

Savings
and De-
fense
Bonds

¹ Short-term interest rates were far below this figure—often well under 1 per cent in 1941.

² As reported in the *New York Times*, August 6, 1941.

sold before the field was given over to defense and war bonds, which differ very little except in name and taxability.

In addition to the bonds, notes, and bills which the government issues directly, it has authorized certain of its agencies, especially gov-
Indirect ernment corporations, to borrow money through the sale
Obliga- of securities. Some of these are not guaranteed by the
tions Federal government, but most of them are. At the close of the fiscal year of 1941 there were outstanding \$6,373,000,000 of these securities, an increase of \$841,000,000 during the year.¹ The R.F.C., F.C.A., H.O.L.C., and T.V.A. are examples of government agencies which have been permitted this authority.

THE BUDGET

Until after World War I the national government managed to get along without any systematized scheme of national expenditures. Some nine standing committees of the House of Representatives drafted fourteen principal appropriation bills providing for the expenses of the various departments of government, while individual members felt quite free to try their hand at the game by introducing a multitude of other appropriation measures. As long as the requirements were relatively modest and the margin between outgo and resources was wide, this more or less haphazard arrangement worked without too great creaking, despite the criticism that was hurled at it. The exigencies of the First World War brought the problem of coordination directly to the attention of the American people and led eventually to the passage of the Budget and Accounting Act of 1921, creating the Bureau of the Budget and the General Accounting Office.

Instead of expecting nine standing committees of the House of Representatives to draw up some sort of financial plan for expenditures, the act of 1921 provided for a Bureau of the Budget to be
Budgetary attached to the Treasury Department, although not an
Practice integral part thereof. A director was appointed by the
from 1921 President at his own pleasure and for an indefinite term.
to 1933 The first director, Charles G. Dawes, brought to the position amazing energy and a high degree of resourcefulness, thus starting the new agency off with a considerable impetus. There were many problems confronting the bureau which had to be at least partially solved and

¹ As reported in the *New York Times*, July 3, 1941.

Mr. Dawes, with his flair for shoving aside tradition and pushing to the very heart of things, managed to do this.¹ A single appropriation schedule, substituted for the fourteen former measures, was presented to Congress shortly after it had convened. The role of the President was rather important under this system, though he was not expected to take away the entire responsibility of the Bureau of the Budget. There still remained the freedom of Senators and Representatives to introduce amendments and even entirely new appropriation bills which conflicted with the general tenor of the proposals made by the Bureau of the Budget. Needless to say, this constituted a very serious loophole through which all sorts of irresponsible financial practices could worm their way in. Nevertheless, the new arrangement proved that it was clearly superior to the old method and in general the bureau managed to achieve a considerable degree of prestige. The expenditures were adjusted to the income; a sizable excess of revenues over expenditures made it possible to retire a large amount of the public debt in record time.

Franklin D. Roosevelt held a somewhat different concept of the role of a chief executive in directing financial affairs. Endowed with more than the usual vitality and desire for authority, **Interval of** Mr. Roosevelt was not long content to permit the Bureau **1933-1939** of the Budget to maintain its independence. In his eyes a single official was best fitted to determine the general policies of the government; other officers were expected to accept what had been decided and proceed accordingly in managing their departments. Shortly after Mr. Roosevelt had appointed Lewis W. Douglas as director of the budget, it appeared that a rift was developing between the two. Mr. Douglas was not disposed to grant that any single man could wisely be charged with the entire responsibility for laying down all policies; moreover, he was not willing to countenance the mounting deficits. Consequently he resigned in 1934, issuing a statement in which he sharply dissented from the President in his general financial views. After this abortive revolution in the Bureau of the Budget Mr. Roosevelt was wary about appointing a permanent successor and permitted the bureau to drift along year after year with an acting director at its head. Although still nominally a part of the Treasury,

¹ Mr. Dawes wrote a book in which he detailed some of his experiences in organizing a budgetary system. See his *The First Year of the Budget in the United States*, Harper & Brothers, New York, 1923.

the Bureau of the Budget for all practical purposes was directly under the chief executive after 1934.

One of the first steps which Mr. Roosevelt took after he had been granted authority in 1939 to reorganize the administrative departments was to transfer the Bureau of the Budget to the executive office of the President, where it would be immediately under his supervision. Then he wisely decided to abandon the policy of selecting a man of affairs as director and brought in Harold Smith, a career man in public administration. As long as the bureau was entrusted with a certain measure of responsibility for drafting a financial policy, there was justification for appointing a well-known public figure as its head; but the concept of the bureau as a service agency which should only reflect the ideas of the President necessitated a trained administrator. Since July 1, 1939, the date of the transfer to the executive office of the President, the Bureau of the Budget has undergone a striking transformation. Its internal organization has been expanded and revamped, and reasonably large numbers of experts have been recruited to direct new activities and to carry on an elaborate research program not only in public finance but in the broad field of governmental efficiency.

No one can doubt the dependence of the Bureau of the Budget on the President under the new system. Whether that is desirable is a matter of controversy, depending to some extent upon one's political philosophy. It may not fit into the doctrine of separation of powers, nor reflect American psychology too well. But it is only fair to point out that it is the practice of almost all foreign governments, including England. Whatever one may conclude about the loss of independent status, it must be admitted that the Bureau of the Budget is now distinctly more energetic than at any previous time. Its studies of problems which have long deserved attention and its intimate grasp of the various ramifications of federal finance are impressive.

There seems to be more than the usual vagueness surrounding the term "budget." Critics of the New Deal sometimes become sarcastic when they hear "budget" applied to the current financial practices, for they maintain that there can be no budgeting if expenditures far exceed income. This concept doubtless goes back to the days when budgets were expected to balance—when the outgo and the revenue were supposed to be equal. If balancing is a primary requisite of a budget, then it is true that we have had no national

**The
Present
Bureau
of the
Budget**

**What Is a
Budget?**

budget for a decade and that even under Herbert Hoover we had no budget for a time. A more satisfactory definition places less emphasis upon the balancing aspect—though no serious person can ignore the far-reaching consequences of extensive deficit-financing—and stresses the financial planning involved. Under this concept expenditures are examined and finally proposed as carefully as possible; revenues also are considered with due care. The two should balance, but if unusual circumstances prevent that, then modern budgetary practice goes a step further and considers how the deficit can best be handled.

The average citizen not only lacks a clear understanding of the meaning of the term "budget," but he hardly knows anything about the steps in constructing it. The fiscal year of the national government does not coincide with the calendar year, beginning **Preparing a Budget** as it does on July 1 and ending the next June 30.¹ Preparations begin approximately a year before a budget is to become effective—policies and general investigations may have been given attention much earlier.

During the summer the Bureau of the Budget requests estimates of their next year's expenditures from the various spending agencies of the government. The larger departments maintain officials **Estimates** who devote themselves entirely to financial matters, while the minor ones entrust the preparation of this information to employees temporarily relieved of other duties. Estimate forms are furnished which require three general types of information: (1) expenditures for personal services, (2) expenditures for supplies, and (3) capital expenditures. In the first category the budgetary officers of a department list in detail the salaries and wages of the people employed, starting with the head and ending with the janitors, scrub women, and watchmen. Each type of job has to be entered separately—for example, one entry will deal with junior typists, another with class five clerks, etc. In every case the basic compensation received by each employee must be indicated; the total amount requested for that class of position must be given; the corresponding appropriation for the current and one or two past fiscal years must be noted; and at the end of the personal service estimates there must be a grand total of the above figures.

The supply estimates are similar except that they list office supplies, small equipment which has to be purchased at regular intervals, fuel, janitor supplies, and all of the thousands of items which are necessary

¹ President Roosevelt indicated in 1942 his dissatisfaction with the present arrangement and promised to try to effect a change to the calendar year.

for running a department. The third estimate forms are not required by many of the agencies, for they do not make expenditures for buildings, land purchase, and permanent equipment.

Estimates of revenue yields are requested from the Treasury Department, which also is expected to furnish the necessary information in regard to interest on the national debt and amounts which are required for tax refunds, retirement of the indebtedness, and so forth.

After these estimates have been prepared by the appropriate agencies, they are transmitted to the Bureau of the Budget early in the fall **Review of** as a basis for its work in drafting the next budget. Here **Estimates** they are examined, compared, and added up to ascertain the total amounts requested. Invariably the estimates of the departments exceed government income or even any possible deficit that may be authorized. This excess results from several factors. In the first place, the desires are always greater than it is feasible to satisfy at any one time. In the second place, some departments, motivated by the "bigger and better" psychology, are very anxious to expand so that they can take on greater relative importance and confer greater prestige on their heads. A third rather curious factor may be attributed to the lessons of experience. A department requires the services of a dozen additional stenographers, but it knows that if it lists only that number it is likely to get perhaps three or four; consequently requests for additional employees or extra supplies are apt to be "padded" so that when the Budget Bureau reduces them they will meet the approximate needs. Inasmuch as it is never possible to tell beforehand exactly what the cut will be, there is always the possibility of getting more or less than is actually wanted.

After the Bureau of the Budget has canvassed the estimates and obtained a general idea of the requests, it schedules conferences and **Confer-** hearings in order to go over the various items, especially **ences and** those that are increased. General conferences may be ar- **Hearings** ranged between representatives of the bureau and of the particular department involved to discuss the estimates. It is the practice in many instances, however, to designate a staff member of the bureau to hold hearings on departmental requests. On these occasions representatives of the department appear before the examiner to argue their claims, show reasons why their requests are necessary, and answer the questions that may be put by the latter. As far as detailed items are concerned, these hearings may be very important, for they fre-

quently determine whether requests will be approved. Of course, the director of the bureau and in the last analysis the President himself have the power to overrule the recommendations of the examiner, but this is not the rule in routine matters.

After the conferences and hearings have been finished—which is ordinarily by December 1—the approved departmental requests, the revenue estimates, and recommendations for handling any deficit are assembled into a budget and it in turn is submitted to the President for approval unless he has already given his consent step by step. Then the document is rushed to the Government Printing Office so that it can be transmitted to Congress by the President during the first week or so of January. It may be added that a budget usually runs to several hundred printed pages.

After the President has laid the budget with his budgetary message before Congress, it is put through substantially the same process that we have noted in the case of an ordinary bill.¹ It starts out in the House of Representatives and the appropriation section goes at once to the Committee on Appropriations which breaks it down into a dozen or so parts for consideration by its subcommittees. These subcommittees are organized on the basis of department lines, so that all appropriations for the Treasury Department or the Federal Security Agency, say, are considered by one subcommittee. The subcommittees go into the recommendations of the Bureau of the Budget and the President with reasonable care, although they can hardly give detailed consideration to every provision. If departments have not fared too well with the Bureau of the Budget they may urge their claims on the committee, which has the power to insert additional items. At one time this practice attained such proportions that it represented a serious evil, but the presidential dominance of the bureau and the administrative departments has served to reduce departmental lobbying. Outside pressure groups frequently seek to have their desires heeded by the committee. Altogether it is probable that substantial changes will be made while the various sections of the budget are in the committee stage either in the House of Representatives or the Senate.

Never again after the budget is referred to standing committees of Congress is it reassembled in a single bill. Instead, as the several large sections are ready for consideration, they are reported by committees,

¹ See Chap. 20.

debated, amended, passed, and sent on to the other house. Frequently a conference committee is required to work out a compromise between the versions passed by the two houses. After one of the large appropriation bills has finally been passed in identical form by both houses, it goes to the President who, except in very rare instances, signs it. The various appropriation bills are disposed of during the spring, but stragglers may have difficulty getting under the wire in time for the new fiscal year which begins on July 1.

In most foreign governments only those proposals to spend money emanating from the executive branch can be considered by the legislative branch which finally has to appropriate the money.

Pork In contrast, the system in the United States permits any member of Congress to introduce bills calling for the appropriation of public funds, and as a matter of fact this privilege is exercised in generous measure. After the Bureau of the Budget has sought to work out an integrated financial plan which it has presented to Congress through the President, much of its effort may be canceled by the attempts of Senators and Representatives to have their own schemes accepted. The result of this freedom is generally deplorable, although it has some advantages. Items which do not appeal to a provincially minded chief executive can under this system receive attention from Congress. However, the most striking effect of the liberty is the establishment of the "pork barrel," under which vast amounts of public funds are poured out on projects that have little or no justification. Senators and Representatives want money to build post offices, construct dams, dredge harbors, and carry on other public works that will impress their constituents and assist them in reelection. Some of these are reasonably desirable, although in comparison with educational and health programs that are postponed for lack of available funds they may be petty. On the other hand, not a few of these ventures represent almost complete waste of public funds. Millions have been spent to dig canals and dredge channels that are never used—it has been estimated that the cost of carrying a ton of freight along some of these amounts to twenty-five times what the freight could be hauled for by railroads or trucks which are not supported at public expense. In 1941 the President asked Congress for \$25,000,000 to improve certain highways regarded as essential to national defense. Congress responded by appropriating five times that amount to be *apportioned* among the states—apparently every state was going to have its finger

in the pie, national emergency or not.¹ Hundreds of millions of dollars are wasted every year on "pork." While almost no one attempts to justify it, still the evil continues for political reasons. Strangely enough, most of the economy talk seems to be directed at cutting federal salaries which are already none too high, doing away with health and recreational services, and abandoning regulatory functions, though the effect on general public welfare would be harmful. Yet comparatively little is said about the pork barrel which could be discarded with scarcely any injurious results and with a saving of very considerable sums of public money.² Restricting the right to initiate appropriation bills to the Bureau of the Budget would go far in this direction; the itemic veto in the hands of the President might also be helpful.³

It is a common notion that the task of a budgetary agency ends after the submission of a budget to the legislative body or at least upon passage of the appropriations by the latter. Actually, ^{Executing} there is a great deal to be done after the budget becomes ^{the Budget} operative. The Bureau of the Budget has not until recently enjoyed the proper staff or the necessary authority to supervise the administration of the provisions of the budget. Consequently agencies have sometimes exceeded their appropriations without justification and Congress has had to grant deficiency appropriations at its next session. Despite the check of the General Accounting Office, agencies have even been able at times to devote public funds to purposes that were never authorized. The whole matter of transfer of funds is one which needs careful supervision. Spending agencies can never be quite certain what demands may be made on them months and even more than a year in the future; floods, droughts, depressions, and wars upset the best of plans. Some funds may not have to be used as anticipated because of changed conditions. It is entirely proper then to transfer funds from one category to another if it is done under adequate supervision. The Bureau of the Budget is the logical agency to consider requests to authorize transfers and to recommend appropriate action to the President. The recently expanded bureau is devoting a considerable amount of time to these supervisory duties after the fiscal year has begun and a budgetary plan is in operation.

¹ This bill was vetoed by the President and just failed of passage over his veto.

² For a criticism of this system, see Charles Warren, *Congress as Santa Claus; Or National Donations and the General Welfare Clause of the Constitution*, University of Virginia, Charlottesville, 1932.

³ For a discussion of the itemic veto, see Chap. 16 above.

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CHAPTER XXVII

MONEY AND CREDIT

IN A highly industrialized economy it is obvious that money and credit facilities are of the utmost importance, while even in the simplest society some form of currency bartering standard is required. The national government of the United States makes direct provision for a considerable variety of both metallic and paper money and plays an important role in furnishing adequate credit facilities not only to industry but to agriculture, local governments, and foreign exporters.

THE MONETARY SYSTEM

We have already noted that many of the functions exercised by the national government are shared with the several state governments. However, the national government is expressly given the authority to "coin money, regulate the value thereof, and of foreign coin,"¹ while the states are forbidden by the Constitution to "coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts."² It follows, therefore, that the monetary field is one which is occupied exclusively by the Federal government. During the early history of the United States the states managed to evade the restriction imposed upon them by chartering banks and permitting them to issue bank notes which were, in effect, "bills of credit." But it was clearly apparent that it was not to the best interests of the country to have more than a single currency system. Some state banks used no discretion in the amount of notes put in circulation; others lacked the financial resources to back sound paper money.³ Therefore, in 1865 Congress decided to make it impractical for state banks to engage

An Exclusive
Function
of the
National
Government

¹ Art. I, sec. 8 of the Constitution.

² Art. I, sec. 10 of the Constitution.

³ One of the most interesting chapters of American financial history is the shady operation of state-chartered banks. While, of course, many of them were reliable institutions, others were completely dishonest. It was, for instance, not at all uncommon to locate a state bank in a remote and inaccessible town in order that those who came into possession of paper money it issued would never take the trouble to ask payment in gold, which in most such cases the bank did not have.

further in the issuing of paper notes by placing a tax of 10 per cent on each note issued.¹ Since that time the currency system of the United States has been entirely under the Federal government, although for many years the national banks were allowed to supplement the paper money circulated by the Treasury.

Although the forefathers followed the English example in many particulars, they decided not to establish a monetary system based on the somewhat unwieldy England pound, shilling, and pence. **The Decimal System** The more easily computed decimal basis was then being discussed by monetary theorists, though few governments had been bold enough to put their recommendations into effect. The framers of the Constitution made no stipulation as to what Congress should do in this matter, but as early as 1792 an act, embodying the ideas of Alexander Hamilton, established a national monetary system based on the decimal relationship. The dollar was made the unit of our currency, being divided into 100 cents for purposes of petty transactions. It is generally felt that the dollar and cent have proved satisfactory units of money and various other countries, including Canada and China, have adopted a similar system. Several South American and European countries as well as Japan now make use of the decimal plan, although they designate their basic coins *pesos, francs, yen*, and so forth.

One of the most bitterly debated questions in the history of the United States has been what standard should be the basis of our monetary system.² For many years both gold and silver were linked together to form a bimetallic foundation for the currency, but in 1900 after the defeat in 1896 of Bryan and "free-silver" Congress enacted a "gold standard" statute which designated gold as a single primary standard. Gold then became the basis of the monetary system, with a value of \$16 attached to each ounce. Silver was, of course, continued as a metal for secondary coinage, but it was subordinated to the rarer gold. Despite some objections, gold remained the unchallenged base of the monetary pyramid until 1933, when Franklin D. Roosevelt was persuaded by his advisers to embark on an experiment intended to increase prices, scale down indebtedness, and lead the country out of the valley of depression. The exportation of gold was forbidden except under license from the Treasury and all

¹ This act was upheld by the Supreme Court in *Veazie Bank v. Fenno*, 8 Wallace 533 (1869).

² For much additional material on this subject, see A. B. Hepburn, *History of the Currency of the United States*, rev. ed., The Macmillan Company, New York, 1924.

kinds of gold coin, gold certificates, and gold bullion were ordered turned into the government in exchange for other currency. On April 20, 1933, the President issued an executive order in which he announced the formal abandonment of the gold standard and three months later Congress passed a law which outlawed the promises of corporations and the government itself to pay bondholders in gold coin or its equivalent.¹

Whether or not the United States is now on the gold standard is a controversial question. Judging from the above executive order and congressional act it is not; yet foreign observers ordinarily regard the United States as the last stronghold of gold. For several years we have purchased all the gold that other countries wished to sell at a price well above the world market, until now considerably over half of the entire gold supply of the world is owned by the government or banks of the United States.² Inasmuch as this metal for other than monetary purposes would be worth nothing like the thirty-five dollars an ounce we have paid, the question may well be put as to why we have invested billions in gold if it is actually no longer the standard of our currency. Hitler and his minions frequently blare forth that the "new order" will forever banish gold as a basis for money, maintaining that it never was a satisfactory standard. Others are certain that eventually the world must return to gold if international exchange is to be at all free. In the meantime the United States guards the billions of gold bullion which it has buried in Kentucky and foreign governments seem anxious to get possession of such gold as they can lay hands on. Even Hitler himself did not disdain the gold of Czechoslovakia and apparently had covetous eyes on the gold treasure of Holland which was, however, shipped out before he managed to take possession. The advantages and disadvantages of gold as a standard for internal monetary provisions and international trade have been and are still being argued, but they are too complex to be discussed here.

Current
Status of
Gold
Standard

¹ The Supreme Court upheld the law abrogating "gold clauses" in private contracts in *Norman v. Baltimore and Ohio Railroad*, 294 U. S. 240 (1935), and abrogating them in government bonds in *Perry v. United States*, 294 U. S. 330 (1935).

² Even in the summer of 1941 after most of the gold for sale had gravitated to the United States, we were buying six to seven million dollars worth per week. The week ending July 31 gold imports were \$6,919,354, while the week ending August 6 they were \$7,739,600. On December 27, 1941, the total monetary gold was \$22,752,488,266.71, an increase of approximately two billion in one year. See the *Statement of the United States Treasury*, December 27, 1941.

Although we pride ourselves on the simple decimal system, we have had until recently a great array of currency. Indeed prior to 1930 it was sometimes claimed that we had the greatest variety of paper money to be found in any country, with the possible exception of China. During the 1930's the Treasury made considerable headway in recalling certain types of paper money and hence at present we have a less varied array than for many years previous. Gold certificates, which once circulated fairly commonly in the larger denominations, have disappeared from the scene since the 1933 ban on gold circulation; national bank notes, which for some three-quarters of a century following 1863 constituted a large proportion of the five, ten, and twenty dollar bills, have been called in.¹ Federal reserve bank notes, never especially numerous, are now almost never seen.² The Treasury notes of 1890 have likewise almost ceased to circulate.³ Gold coins are not, of course, permitted to leave the vaults of the Treasury.

At present only three types of paper currency are widely used in the United States. Federal reserve notes, which are issued by the Federal reserve banks, now have a fairly complete monopoly of the field above the \$1.00 level, beginning with the \$5.00 denomination and going through \$10, \$20, \$50, and \$100 denominations to \$1,000 and even larger amounts for bank use.⁴ Silver certificates, issued by the Treasury Department on the basis of silver bullion, are very numerous in the \$1.00 denomination,⁵ while United States notes, ranking a poor third in numbers and also put out by the Treasury Department, are still fairly important. Needless to say, paper money is now used for settling most transactions where checks or drafts are not employed.

At one time in our history large numbers of persons were reluctant to accept paper money. They did not trust state bank notes nor Civil War "greenbacks" and hence their pockets clanked with silver dollars and gold eagles. Gold is now entirely out of the picture and silver dollars are almost a curiosity except in the West where the old fondness for metal still persists. In contrast to the silver dollar's lack of popularity, half dollars, quarters, dimes, nickels, and

¹ As of December 27, 1941, \$145,671,770 were still outstanding. See *Statement of the United States Treasury*, December 27, 1941.

² As of December 27, 1941, \$19,829,589.50 of these were outstanding. See *ibid.*

³ On December 27, 1941, \$1,159,022 only were outstanding. See *ibid.*

⁴ Those totaled \$8,592,656,000 on December 27, 1941. See *ibid.*

⁵ These totaled \$1,947,143,056 on December 27, 1942. See *ibid.*

pennies circulate as never before.¹ The mints have recently been working overtime to meet the demand and the pressure is so great that a new mint has been proposed.²

The paper money of the United States is all manufactured at one plant in Washington, which also finds the time to print postage stamps and government bonds as well as occasionally currency for Latin-American countries. A special grade of paper, purchased from private firms, is consumed in large quantities. Skilled engravers laboriously turn out by hand the plates used to print the paper money. The time required to engrave a single plate is such and the demand for paper money so great that there arose a problem a few years ago of obtaining sufficient plates. The Bureau of Standards was called in for advice and after experimentation found that the life of a single plate could be prolonged appreciably by chromium plating. The bills must be examined with care for possible defects, numbered, and registered before being placed in circulation through the Federal reserve banks and Treasury. A laundry is maintained for washing bills which have become soiled but which have not reached the stage where they have to be destroyed. Paper money is, of course, far less durable than metal and consequently is constantly being replaced.³

Bureau of
Engraving
and
Printing

The metal coins are manufactured by mints⁴ located in Philadelphia, Denver, and San Francisco. These combined do not turn out anything like the value of money which is manufactured by the Bureau of Engraving and Printing, but they are, nevertheless, very busy.⁵ Considering the durability of a coin, one may wonder where the money already turned out finally goes. The increase in population and the expansion of trade, especially the rise of the "cash-and-carry" chain stores, doubtless account for some of the output of the mints, but the tons of pennies, nickels, and dimes which are coined every week must far exceed any such requirement.⁶

Mints

¹ The total value of coins in 1941 reached \$699,000,000.

² The total amount of money in circulation as of November 8, 1941, was \$10,421,000,000—an increase in one year of some \$2,000,000,000. See the *New York Times*, November 9, 1941.

³ On this bureau, see W. A. DuPuy, "How Our Money Is Manufactured," *Current History*, Vol. XXIV, pp. 236-241, May, 1926.

⁴ On the mints, see J. P. Watson, "The Bureau of the Mint," *Service Monograph* 37, Brookings Institution, Washington, 1926.

⁵ During 1941 they operated twenty-four hours per day and seven days per week. In the first nine months of 1941 they turned out 1,151,575,000 American and 207,003,500 foreign coins—an all-time record.

⁶ Circulation of coins reached \$699,000,000 in 1941, an increase of \$95,000,000 in one year.

Early in his first administration President Roosevelt conceived the idea of devaluing the currency. He had been advised that our dollar was too costly in comparison with the English pound and other national currencies which had already been devalued and that in order to compete in foreign markets we ought to cut the value of our own money. Moreover, the advocates of inflation promised that cutting the value of the dollar would cause prices of general commodities to rise which in turn might be expected to restore a measure of prosperity. Congress authorized the President to devalue up to 50 per cent and he, in turn, finally brought the dollar down to 59 per cent of its former rating. The effects of the devaluation were much less pronounced than had been promised. Other countries neutralized the cut in the dollar by additional cuts in their currencies, while much to the indignation of the "experts" the 59-cent dollar purchased about as much in the United States itself as had the 100-cent dollar. When the act authorizing the President to devalue was about to expire in 1941, it was felt in some quarters that no additional extension was advisable. However, the office of the President desired to retain the authority and Congress finally granted a continuance. The margin now permitted is not great, but additional legislation might be passed to supplement the authority in the event that devaluation, after the European example,¹ seemed the most feasible way to handle our huge national debt. It is improbable that any steps in this direction will be taken until the postwar period.

Although the United States has not been on a silver standard for many years, it has recently been engaged in the wholesale purchase of silver bullion. Led on by the repeated and insistent demands of the western Senators and Representatives who found themselves besieged by silver-mining constituents, the desire to win the favor of Mexico, and certain other factors, Congress authorized the Treasury to buy any silver offered at a price well above the world market until it totaled one-fourth our gold. Tons of silver have come in, not only from the United States but from Mexico, China, and other foreign countries, which have found it an excellent opportunity to get rid of useless silver at good prices. Hundreds of millions of dollars of public funds have been expended on buying metal not needed for coinage and which would seem to have no purpose in connection with the

¹ France, for example, devalued after World War I by 80 per cent and brought the franc from about 20 cents to 4 cents in American equivalent.

monetary system at all.¹ The Treasury has had to provide extensive storage quarters and employ guards for what large numbers of persons regard as an enormous white elephant, forced on the nation by the activities of a vigorous pressure group and a small bloc of "silver" Senators.

THE FEDERAL BANKING STRUCTURE

The most important element of the federal banking structure is the Federal Reserve System which has been in operation since 1913.² A Federal Reserve Board, which occupies an imposing building in Washington, is composed of seven governors, appointed by the President with the consent of the Senate for fourteen-year terms. The chairman of the board is considered one of the ranking members of the government, almost if not quite equaling a cabinet secretary. The authority granted to the Federal Reserve Board has varied from time to time, but it has in general increased through the years, until it is of far-reaching importance. At the same time the board is somewhat more dependent on the President than was the case prior to 1933 and tends to reflect the policy of the chief executive on monetary and credit problems.

**The
Federal
Reserve
Board**

The board has general supervision over the twelve Federal reserve banks which cover the entire United States, but perhaps more important than even that function is its power to formulate general policies. When an abnormal financial situation confronts or threatens the country, the Federal Reserve Board may attempt to restore balance, expanding or contracting the credit of the commercial banks by lowering or raising the rediscount rate.³ The general theory upon which the board works is that the ups and downs of the business cycle are harmful to the national economy. Hence it unleashes forces which work in exactly the opposite direction of cyclical tendencies and help to stabilize business activity.

**Functions
of the
Federal
Reserve
Board**

¹ The silver bullion held by the Treasury amounted to 1,139,975,993 ounces valued at \$1,473,908,354.67 and silver dollars totaled \$484,144,547 on December 27, 1941. See *Statement of the United States Treasury* for that date.

² For additional discussion of the Federal Reserve System, see S. E. Harris, *Twenty Years of Federal Reserve Policy*, 2 vols., Harvard University Press, Cambridge, Mass., 1933; P. M. Warburg, *The Federal Reserve System*, 2 vols., The Macmillan Company, New York, 1930; and E. W. Kemmerer, *The A B C of the Federal Reserve System*, rev. ed., Princeton University Press, Princeton, N. J., 1938.

³ The discount rate is the rate of interest banks charge when they lend money. The rediscount rate is, then, the rate of interest at which Federal reserve banks lend money to commercial banks.

Thus if in the depression sector of the business cycle the need for additional credit seems acute, the board may reduce the rediscount rate to say 2 per cent, which in theory at least will have the effect of encouraging banks to lend money at reasonable rates of interest and thus also encourage business activity. If on the other hand in the inflationary or boom sector of the business cycle it seems necessary to restrict business activity, the board may raise the rediscount rate to 5, 6, 7, or even a higher per cent, which causes the banks to increase their interest rates drastically and thus in theory seriously contracts the amount of credit available to business. Another method the Federal Reserve Board can use to expand or contract credit is "open-market" operations. In depression periods, the board can order Federal reserve banks to buy commercial paper and bonds from commercial banks and thus supply the latter with cash, while in boom times it can order them to sell and thus take away cash from commercial banks.

Prior to 1929 it was ingrained on the mind of every schoolboy that these powers were so great that, together with the authority to control the issuance of Federal reserve notes, they would render impossible a financial panic or economic depression. However, despite the action of the Federal Reserve Board in raising the rediscount rate to more than twice its ordinary level in 1929, the United States, as everyone knows all too well, came in for the worst internal drubbing that it has ever taken. Likewise, when the board subsequently lowered the rediscount rate to a point below what it had ever before been, business activity was not increased for quite a long time. Amendments to the legislation governing the board have aimed at strengthening the controls enough so that the future may tell a different story, but it remains to be seen how well even a reorganized Federal Reserve Board can ward off or cope with a major financial catastrophe. Many people still have doubts that the powers of the board are even now adequate to control credit. The present danger (March, 1942) is, of course, war inflation, the possibility of which is heightened by circumstances over which the board has not very much authority. Commercial banks have, during the depression and the period of gold importation, built up huge reserves of idle money. All this could be the basis for a tremendous inflationary movement which the Federal reserve banks would find hard to stop since commercial banks, having plenty of idle money of their own to lend, do not need to go to the Federal reserve banks for credit. Thus the

**Effective-
ness of
Federal
Reserve
Powers**

latter might not be given an opportunity to exercise the deflationary influences of the rediscount rate and open-market operations. In 1941, the Federal Reserve Board attempted to prevent the use of this idle money for lending purposes by requiring that much of it be used to increase the reserve which commercial banks must keep against deposits. Even so, the amount of idle money which can still be used for credit expansion is terrifyingly large.¹ In August, 1941, President Roosevelt issued an executive order in which he authorized this agency to draw up rules that would curb installment buying, a form of credit, as a method of discouraging inflation and incidentally making raw materials available for the national defense program.²

Under the supervision of the Federal Reserve Board are twelve Federal reserve banks which are located in large districts into which the United States has been divided. Each one of these is under the immediate supervision of a governor and nine directors, three of whom represent the Federal Reserve Board in Washington and six the private banks which are members of the reserve bank and own a part of its stock. These banks maintain elaborate offices in key cities, retain fairly large numbers of employees, and have in each case a capital stock of not less than \$4,000,000. At present the national government owns part of this stock and the member banks the remainder, but there is some agitation to have the government buy the bank-owned stock so that it will have even greater control than at present. The directors of each bank may determine the local rediscount rate subject to approval by the Federal Reserve Board in Washington and control the issuing of Federal reserve notes in so far as the central board does not desire to intervene. All national banks must belong to and hold stock in the Federal reserve bank of the district in which they are located; state banks may be members if they meet the requirements and if they find it advantageous.

The Federal reserve banks do not carry on a general banking business with corporations or individuals. Rather they act as fiscal agents of the Federal government and as banks for the local member banks. In the former capacity they sell federal securities, hold custody of public

¹ The total "excess reserves" or "idle money" of banks which are members of the Federal Reserve System was estimated to be \$3,160,000,000, as of March 18, 1942.

² For the full text of this executive order, see the *Federal Register*, August 12, 1941, or the *New York Times*, August 13, 1941. Steps in this direction were taken by the Federal Reserve Board in 1941 and 1942.

funds, transfer federal moneys from offices of the collectors of internal revenue or customs to the Treasury, pay government checks and interest coupons, and issue paper currency. It is obvious that they relieve the Treasury of a heavy burden and are virtually indispensable to carrying on the functions of the national government. Most of these activities are self-explanatory, but the note issue is somewhat complex. Federal reserve notes are printed by the Bureau of Engraving and Printing for the Federal reserve banks and stored in their vaults until needed. Then when the Federal reserve bank rediscounts the commercial paper of member banks, it furnishes either credits or Federal reserve notes as payment. The notes must in every case be backed to at least 30 per cent by gold or federal securities unless the Federal Reserve Board permits a smaller reserve and to the remainder of their face value by commercial paper. In reality these notes have recently been backed by as much as approximately 70 per cent of their value in gold or federal securities and only by 30 per cent in commercial paper. By basing the issuance of currency on commercial paper, the amount of currency in circulation at any one time bears some relationship to the demand for money. Prior to 1913 the amount of currency was more or less the same whether or not business was active and whether the demand for money became large or vice versa. But now if business is slack the amount of currency in circulation is relatively small, with the remainder reposing in the vaults of the Federal reserve banks, whereas if business is booming the demand for credit will be great and the circulation of Federal reserve notes large.

The services which Federal reserve banks perform for their member banks are important, but they fall within the sphere of economics rather than that of political science. By way of summary, it may be said that they act as clearinghouses between banks not located in the same city, especially between banks situated in different sections of the country; that they keep on deposit the reserves of national banks,¹ thus reducing the danger of theft; and that they rediscount the commercial paper of member banks, thus making it possible for these local banks to meet the credit needs of their customers.

Scattered throughout the country are more than five thousand

¹ Reserve requirements were raised as of November 1, 1941, to the statutory limit as an anti-inflation precaution. They were fixed as follows: 26 per cent for central reserve city banks, 20 per cent for reserve city banks, 14 per cent for country banks, and 6 per cent for time deposits.

privately owned ¹ banks which are designated "national banks." These banks have been chartered by the Treasury Department under a series of laws which go back as far as 1863. They must meet **National Banks** federal requirements in regard to capital stock, must be members of the Federal reserve bank of the district in which they are located, and are regularly inspected by examiners who are attached to the office of the comptroller of the currency ² in the Treasury Department.

The banking crisis in 1933 frightened large numbers of people so much that it seemed unlikely that they would in the future trust banks unless some guarantee of deposit safety was made. **Federal Deposit Insurance Corporation** The advisers to the President were of the opinion that a government corporation should be created to insure deposits of \$2,500 or less (this was later increased to \$5,000) in return for premiums to be paid by banks of 0.25 per cent on total deposits. Congress passed the necessary legislation and the Federal Deposit Insurance Corporation came into being. In 1941 it insured deposits in more than thirteen thousand banks. It is too early to evaluate this agency with any degree of certainty. No one can doubt that it helped restore confidence in the banks and led to the speedy resumption of business with them. On the other hand, there has been no real test of the ability of the fund which is being built up to withstand the terrific onslaught of a national depression, though more than 1,000,000 depositors in 355 banks had been repaid in full up to 1942.³ The several states that have experimented with the insurance of state bank deposits have not found it possible to maintain solvency of their systems.⁴ Many authorities in the field of banking predict trouble sooner or later in the federal scheme,⁵ but thus far all claims have been met promptly

¹ While these banks are in general privately owned, the Federal government may own a part of their stock. This was not the case prior to 1933, but has been regarded as necessary to strengthen certain banks lacking sufficient capital.

² Although many changes have taken place since its publication, J. G. Heinberg's "The Office of Comptroller of the Currency," *Service Monograph*, 38, Brookings Institution, Washington, 1926, is still worth consulting.

³ Less than 5,000 depositors in these 355 banks suffered loss, which amounted to some \$3,000,000. This was about one-thirtieth of the average loss prior to the setting up of F.D.I.C.

⁴ Among the states that attempted such insurance were Oklahoma, Nebraska, and North Dakota. Their failure has been explained away by pointing out that their systems were not broad enough to render them invulnerable to cycles of farming prosperity.

⁵ Herman B. Wells, president of Indiana University and former head of the Indiana State Banking Department, expressed grave concern at the soundness of the F.D.I.C. in an address before the Indiana Academy of the Social Sciences in 1938.

and without straining the resources of the corporation.¹ The large banks of New York City are especially critical of the compulsory character of the plan—they do not object to the arrangement per se except in so far as it affects themselves. They maintain that, though under the present provisions they must contribute something like one-third of the premiums of the corporation, still they derive very little benefit from it because the bulk of their deposits are well over \$5000. Some of the more conservative bankers denounce the basic principle underlying the insurance, maintaining that it encourages the speculator and the daredevil banker by compelling the cautious banker to pay for the shortcomings of his less efficient colleagues.²

OTHER FEDERAL CREDIT AGENCIES³

It is probable that the majority of American citizens think of the Reconstruction Finance Corporation as a New Deal contribution.

**Recon-
struction
Finance
Corpora-
tion** Actually, it was set up under the Hoover administration, although its authority and activities have been notably expanded since 1933. This corporation is managed by seven directors, of whom three serve by virtue of other federal offices they hold and the remaining four are appointed by the President with the consent of the Senate. The chairman of the board of directors has increasingly made himself responsible for the actual administration of the corporation and is now frequently believed to have complete control of its activity.⁴ The R.F.C. is financed by the government both through the direct medium of capital and the authorization to borrow money which is guaranteed indirectly by the government. The original capital of \$500,000,000 has been increased substantially and borrowing authority in excess of \$10,000,000,000 has enabled the corporation to lend billions of dollars.⁵ During the years 1932 to 1942 it

¹ On December 31, 1940, capital and surplus of F.D.I.C. stood at \$496,000,000, or \$207,000,000 more than the original capital of \$289,000,000.

² For additional discussion of this topic, see R. G. Thomas, *Modern Banking*, Prentice-Hall, Inc., New York, 1937, Chap. 5. The F.D.I.C. recognized this problem in 1941 when it asked Congress for additional supervisory authority over insured banks. See *New York Times*, September 17, 1941.

³ See Chap. 29 below for a discussion of agricultural credit.

⁴ This is to a considerable extent because Jesse Jones, long chairman, has been a very active manager.

⁵ Additional borrowing authority given by Congress in 1942 raised the total above the \$10,000,000,000 mark.

granted credit of \$15,057,000,000 and actually disbursed approximately \$10,000,000,000.¹

The R.F.C. is charged with handling credit which cannot be furnished by private institutions and which does not come within the scope of other government credit agencies. During the depths of the depression it assisted substantially in keeping the local governments from bankruptcy, loaning them anywhere from a few thousand to tens of millions of dollars for reorganizing their tottering finances. The board of education of Chicago received \$100,000,000 alone on the security of lands it owned and thus was able to pay the salaries of its teachers which were months in arrear. For a time the R.F.C. was very active in assisting the state and local authorities to meet the unprecedented demand for relief. As the railroads sank deeper and deeper in the mire of depression until it seemed that their entire financial structure, once regarded as reassuringly solid, would collapse, this corporation came to the rescue of those which had any likelihood of survival. The cry went up in 1935 and 1936 that ordinary commercial banks were not meeting the legitimate demands for corporation and industrial credit. An investigation carried on by the Treasury Department seemed to point in this direction, but it also revealed that the regular banks could not extend the type of credit needed. Subsequently the R.F.C. was authorized to loan money to certain classes of these private businesses. Banks, insurance companies, trust companies, agricultural associations, livestock interests, as well as other businesses have all at times been the recipient of R.F.C. assistance. At times it has seemed that the corporation was not active and in 1937 Congress authorized the President to restrict its operations to those borrowers which could not obtain adequate credit elsewhere.

But though the corporation has devoted much of its attention during recent years to liquidating some of its earlier loans, it has also entered new fields. When national defense became particularly important in the summer of 1940, Congress authorized the R.F.C. to lend \$500,000,000 to the Export-Import Bank which was in turn authorized to lend that to foreign governments or central banks of the Western Hemisphere subject to the

**Functions
of the
R.F.C.**

**National
Defense
Role of the
R.F.C.**

¹ For an account of some of the loans made by the former chairman, see Jesse H. Jones, "Billions Out and Billions Back," *Saturday Evening Post*, Vol. CCIX, pp. 5-7, 23ff., June 12, 26, 1937.

approval of the Department of State. Congress further permitted the R.F.C. at the request of the President to lend money to or buy the capital stock of companies vital to national defense which needed money for plant or inventory expansion. And finally it permitted the corporation to set up a number of subsidiaries to purchase vital raw materials (hence the Rubber Reserve Corporation capitalized at \$5,000,000, the Metal Reserve Corporation also capitalized at \$5,000,000) and to build armaments plants and homes in defense areas (hence the Defense Plant Corporation ¹ capitalized at \$5,000,000 and the Defense Homes Corporation capitalized at \$10,000,000). Not all these powers have as yet been fully exercised, but there is every reason to believe that before the defense expansion is over they will be.² Subsequently, under authority granted by the Lease-Lend Act of 1940, it arranged a loan of several hundred million dollars to England who gave as collateral American securities which could not be sold without upsetting the market. Total defense commitments of R.F.C. down to March 7, 1942, aggregated \$11,494,438,962.

Considering the predictions made during the years when the R.F.C. was especially active in meeting the unusual problems arising out of the depression, it is literally amazing that it has been able to do so well in collecting its loans.³ Of course, the amounts paid out for direct relief have not been recovered, nor are they likely to be repaid. Some of the loans to railroads and private corporations may entail a loss,⁴ but the general record is excellent. As a matter of fact, the corporation has made a substantial profit on many of the bonds of cities, counties, school districts, and other local governments which it acquired as security for loans, because the market for local government bonds has improved materially since they were taken over. As occasion presents itself, these securities are sold by the R.F.C. and the proceeds returned to the funds made available for new loans. In this connection it should be noted that the corporation has rarely made unsecured loans and has for the most part kept itself free from politics.⁵

¹ This corporation had made commitments of \$4,797,757,903 down to March 7, 1942.

² An increase of \$1,500,000,000 borrowing power was granted in October, 1941; early 1942 saw another \$2,500,000,000 added.

³ See the quarterly *Reports of the Reconstruction Finance Corporation*.

⁴ The loan of some \$90,000,000 to the Dawes bank in Chicago may be cited as an example of a small loss to the R.F.C., though all but a fraction was repaid.

⁵ Nevertheless, in 1942 R.F.C. came in for considerable criticism. Critics claimed that it failed to appreciate national defense needs and consequently was both slow and overly cautious in providing essential credit.

The Federal Housing Administration ¹ was created in order to encourage home ownership by the many citizens who find it impossible to pay cash and yet who have sufficient resources to justify acquiring such property. Contrary to a rather popular misunderstanding, this administration does not lend money; actually it insures loans which are made by banks, building and loan associations, and other private companies. Application must be made in detail to the local offices of the F.H.A., setting forth the improvements planned on existing property, the character of already built houses which the applicant desires to acquire, or the plans and specifications drawn up for new homes. It may be added at this point that the F.H.A. is especially interested in encouraging the construction of new homes because of the lag in building since 1929. Several hundred thousand new homes have been constructed throughout the United States with its assistance.² However, the necessity of dedicating raw materials to national defense purposes largely brought the building of new homes to a halt after war was declared in 1941.

Federal
Housing
Adminis-
tration

F.H.A. is based on the premise that loans for home acquisition should be liquidated gradually by payment of monthly installments. Hence it permits loans to run for as long as twenty-five years in some classes of buildings. There are no renewals, reappraisals, calling of mortgages, such as characterized the private lending for this purpose. Once a loan has been granted it runs as long as the period specified and cannot, even if the borrower desires, be paid off earlier unless a penalty of 1 per cent of the face value of the mortgage is paid. The only fees are those paid when the loan is taken out and they are insignificant in comparison with corresponding fees frequently charged by banks and loan companies. Maximum interest rates are stipulated—4½ per cent for loans under \$5,400 and 5 per cent for loans above that amount. An insurance fee of 0.25 per cent is added to the former rate and 0.5 per cent to the latter. Taxes, insurance, interest, and principal are all computed and combined in the single monthly payment that is specified before the loan is granted.

Basic
Principles
of F.H.A.

As far as can be determined, the record of the Federal Housing

¹ F.H.A. started out as an independent agency; later it was placed in the Federal Loan Agency; when F.L.A. was abolished in 1942, it was put in the new National Housing Agency.

² During the national emergency the F.H.A. expanded its program to meet defense housing needs and in the first seven months of 1941 authorized approximately 125,000 new small homes of which about 85 per cent were in defense areas.

Administration seems reasonably good. The inspection provided for is less thorough than the rules would indicate and at least in certain cases it does leave something to be desired. Likewise there is reason to believe that politics entered a few of the local offices prior to the transfer of their staffs to a merit basis. Banks sometimes complain about the low interest rates and declare that the term of the mortgages is too long. In Florida there have already been a good many cases of houses on which only 10 per cent down payment was made being thrown back upon F.H.A. after the original occupants have concluded that their property was not worth the amount of the mortgage. A certain amount of loss is, of course, inevitable; perhaps an initial payment of 10 per cent is unduly small. Yet it is not quite fair or even accurate to judge the F.H.A. (and many other government corporations) entirely on the basis of monetary profit or loss. A better guide is an appraisal of the worthiness of its goals and the progress it has made in attaining them. With that in mind, one cannot ignore the F.H.A.'s contribution toward the improved appearance of cities throughout the length and breadth of the country, the intangible value of home ownership to many who otherwise would not have ventured into such uncertain territory, and finally the probable improvement in the quality of home building as well as in architectural styles.

Less is heard of the Federal Home Loan Bank Administration¹ which supervises the Home Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation. During the worst of the depression when thousands of home owners were faced with the loss of their homes through mortgage foreclosure, a clamorous demand arose for government assistance. The result was the creation by Congress at the instigation of the President of the Home Owners' Loan Corporation. Those who were in difficulty could apply at their local branches of this corporation and if their situations seemed at all hopeful were granted assistance. There is some reason to believe that assistance was too generous in numerous cases where people did not have the financial resources that would enable them to meet even small payments. At any rate there have been many cases in which the corporation has been forced to foreclose its own mortgages and dispose of the property to the best possible advantage, even though the amount of the mortgage could

¹ F.H.L.B.A. is a division of the National Housing Agency created in 1942; a similar board was part of the Federal Loan Agency.

not be realized. Some observers predict that the H.O.L.C., though it is now no longer making loans,¹ will eventually cause the government a great deal of trouble. Not only is there danger of large financial loss entailed in necessary foreclosures, but also there are already evident strong pressures to force the government to excuse entirely all the indebtedness. Many home owners argue tha' the government has helped the farmer, the banker, the unemployed, so why should not the mortgages owned by the Home Owners' Loan Corporation be written off? The Federal Savings and Loan Insurance Corporation does in a general way for building and loan associations what the Federal Deposit Insurance Corporation attempts in insuring deposits in commercial banks.

Finally, there is in the Department of Commerce the Export-Import Bank which, though it promised a great deal when it was started, has not been as active as many anticipated. One of the results of the great depression was the virtual strangulation of world trade. Reduced national incomes injured foreign trade to a considerable extent, but the enthusiasm for national self-sufficiency, which led to the erection of insurmountable trade barriers around many nations, almost ruined what was left. Countries, such as the United States, found themselves at a special disadvantage because of the ruthless barter agreements which Germany and other Fascist or semi-Fascist countries insisted upon as a price for doing business. In order to assist American business firms in extending liberal credit to Latin-American and other buyers, the Export-Import Bank was set up. Its stock is entirely owned by the government and its operations are, of course, conducted by a manager who is directly responsible to the Secretary of Commerce. Fairly large loans have been made to finance sales to Latin-American countries and China, but the international situation has made it difficult to carry out original plans.

Export-
Import
Bank of
Washing-
ton

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¹ The progress being made in liquidating its mortgages may be traced in the annual *Reports of the Home Owners' Loan Corporation*. In 1941 this agency moved its main offices from Washington to New York City.

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CHAPTER XXVIII

THE GOVERNMENT AND BUSINESS

THE Constitution has little or nothing to say directly about the government and business, although it does refer to patents, copyrights, and bankruptcy which, of course, have an important bearing on the subject. The framers of the Constitution were for the most part men of affairs and certainly were not oblivious to the important role of economic enterprise. How then did they omit this sphere so largely from the Constitution which they framed to guide the destinies of the country? Perhaps, to begin with, they were conditioned by the environment in which they lived, which had the effect of concentrating their attention upon problems that had long been a source of irritation. Hence they conferred on the national government the power to levy taxes, the regulation of interstate and foreign commerce, and the duty of national defense. All of these had occasioned serious worry under the Articles because, though there was need for action, the central government had no means of dealing effectively with the problems. The regulation of business, on the other hand, was not something which had been uppermost in the public mind. Most of the business was local in character—there were no giant monopolies which stretched from one end of the country to another and in some respects possessed more power than the government itself. Consequently any regulation which was required could be furnished by the states and local governments. Finally, there was the general feeling that business, being without the province of government, should be left to private initiative as far as possible.

As the frontier was pushed westward until it finally vanished, and agriculture yielded the dominant role to industry, business came more and more into the public eye. The organization of certain types of business into corporations with enormous resources and widespread activities not only extended business enterprise beyond the borders of a single state but confronted the public authorities with a concentration of power such as they had not envisioned. When the practices of the monopolies conflicted with what was generally regarded as the public good, public opinion began to insist on government regulation.

With the Constitution silent on the regulation of business and the national government one of enumerated powers, Congress was faced with the problem of finding some basis for any legislation which it would pass in this field. The most logical clause on which to build was the clause which conferred on Congress the power "to regulate commerce with foreign nations and among the several states";¹ consequently Congress sought to imply from interstate commerce the right to regulate general business. But the Supreme Court was not disposed to permit this, and in the *Knight* case, decided during the closing years of the last century, laid down the categorical rule that manufacturing, and indeed business in general until it involved the shipment of goods across state lines, was not included under interstate commerce. Thereafter, for more than a third of a century Congress found itself in a very weak position as far as regimenting business was concerned. In so far as large businesses, which carried on activities in several states, sent goods from one state to another, they were engaged in interstate commerce and could be brought to task for their sins, but it was difficult if not impossible to bring many of their practices into close enough relationship with interstate commerce to sustain regulation. As the years went by and economic problems occupied more and more the center of the stage, various attempts were made to expand the commerce clause, and occasionally the Supreme Court gave a certain amount of support. Speaking for the court in the *Olsen* case² Chief Justice Taft in 1923 said that anything which materially affected the price of food, clothing, and other necessities of life in more than one state could be regarded as interstate commerce and therefore subject to congressional regulation. Yet as Congress sought to put this concession into practice, the Supreme Court frequently found that the relationship was not sufficiently direct. In the *Schechter* case,³ for example, the court stressed the point that incidental effect was not enough to invoke the commerce clause. Since 1937 the Supreme Court has shifted its position and now regards businesses which extend over more than one state as generally coming under the commerce clause. Thus after almost a century and a half the right of the national government to concern itself with the practices of industry has come in for clear recognition.

¹ Art. I, sec. 8.

² *Chicago Board of Trade v. Olsen*, 262 U. S. 1 (1923).

³ *Schechter Poultry Corporation v. United States*, 295 U. S. 495 (1935).

Despite the impotence of the national government in regulating business practices which were detrimental to the public welfare, it must not be supposed that the relations between the government and business were purely formal. As a matter of fact some persons went so far as to maintain that the national government was little more than the creature of big business. This allegation is of dubious validity, but it is true that the influence of business on government actions was frequently notable.

**Early
Relations
of Govern-
ment and
Business**

Anyone who is acquainted with tariff history in the United States is well aware of the attention which Congress paid to the desires of the business men of the country who descended on Washington in droves when the word got around that a tariff revision was in the offing. This business group wanted protection against imported steel products; that business group asked for a high barrier which would keep out cotton goods; and so it went down the line, until the tariff got to be such a complicated affair that only the experts knew what it contained. The tariffs of the period 1890-1930 contained thousands of items which were inserted for only one reason: to afford American business a substantial advantage over the foreign producers of the same product. It was sometimes argued that the tariff was aimed at protecting wage standards and it is doubtless true that it did contribute to that end, but its primary purpose was to strengthen American business. That is not to say that this was necessarily bad for the country as a whole. The farmer was not too enthusiastic about many of the walls which were set up; consumers sometimes figured that the tariff ate up something like \$600 of a \$1,500 annual income of a family of five. Nevertheless, business grew from a very humble position until it was not surpassed by industry anywhere in the world, and the United States developed a self-sufficiency and a general prosperity that were the envy of many less fortunate countries.

**The
Tariff**

In addition to tariff protection, business expected other services from the national government. Where the local police failed to afford protection to property, it was not unusual for large corporations to bring pressure to bear to have the federal troops sent in. Federal courts were appealed to by many business interests to protect them from labor troubles¹ and from regulation by state legislatures and administra-

**Other
Early
Govern-
ment Serv-
ices to
Business**

¹ The Norris-LaGuardia Act of 1932 reduced the power of the federal courts to intervene in disputes between labor and capital.

tive agencies. Public utilities found that the federal courts were a source of great comfort when they had exhausted every other remedy, for by asserting that they were being deprived of their property without due process of law they could often persuade the federal courts to reverse rulings and orders of state courts and public-service commissions. Again there was an expectation that the national government would seek to encourage markets for American products abroad through the consular service and commercial agents and that it would afford business every aid in transacting business abroad—even though this required the sending of the marines to the Central American countries.

Yet despite the favors which business asked from the national government, it was not disposed to accept any regulation from it. Nevertheless, there was a certain amount of successful regimentation even around the turn of the century. Corporate attempts to influence government action by the offer of bribes were made increasingly dangerous by the stiffening up of the law. In 1907 a law was passed which made it illegal for corporations to contribute to the campaign funds of political parties. This was not strictly enforced, but it served some purpose perhaps. Even as far back as 1890 Congress passed the Sherman Act which aimed at abolishing “unlawful restraints and monopolies” in the case of interstate commerce. The Knight case in 1895, as we have noted, saw that act whittled down by the exclusion of manufacturing, but even so it represented a certain amount of regulation. Had the federal authorities pushed its enforcement, it might have been far more effective, but it was not until Theodore Roosevelt became chief executive that vigorous steps were taken against the “trusts.” The Supreme Court upheld the conviction in the Northern Securities case,¹ but later it assumed a more cautious attitude, holding that only “unreasonable” monopolies were to be prohibited.

The decisions of the Supreme Court in the American Tobacco and Standard Oil cases ² aroused a great deal of controversy which finally caused Congress to enact two additional statutes. The Clayton Anti-trust Act (1914) sought to strengthen the earlier Sherman Act by specifically forbidding certain practices such as rebates, price-cutting for the purpose of driving out competitors, the acquiring of stock by

¹ 193 U. S. 197 (1904).

² 221 U. S. 1 (1911).

**Early
Attempts
to Regulate
Business
Practices**

corporations in competing firms, and interlocking directorates. It furthermore provided that officers of corporations should be personally liable for violations of the terms of the act and made it somewhat less difficult for prosecutions to be brought by those suffering from the practices prohibited. The second statute created the Federal Trade Commission.

Although Woodrow Wilson was enthusiastic about the Clayton Act, declaring that it would "check and destroy the noxious growth" of monopolies, it did not prove anything like as effective a control as was anticipated. The First World War centered the attention of the nation on more pressing matters; the succeeding Republican administrations were not disposed to "bite the hand that fed them." Finally, the National Industrial Recovery Act, one of the early loves of the New Deal, seemed to some persons to remove all restrictions from monopolies by almost giving a free hand to industries within a class to write their own ticket. Of course, the underlying theory of the New Deal was categorically opposed to monopolistic practices, but the actual administration of the act while it remained in effect was frequently divorced from the theory. Later President Roosevelt apparently realized the contradiction and pressed the Department of Justice to vigorous action.

For many years the Department of Justice has maintained a division which is supposed to devote itself to the enforcement of the laws which regulate monopolistic practices. The agents of this division have invariably gone through the motions of fulfilling their duties, but energy has not always been in their work. Some of them have been drawn from the ranks of lawyers who see nothing wrong in big business, even when it engages in practices which are opposed to the public interest. Others were willing to admit the menace of uncontrolled monopolies, but they were of the opinion that nothing could be done to check them because of the loopholes in the law, the influence of the corporations, and the conservative attitude of the courts. In many cases the attorneys who were supposed to prosecute trusts took their cue from the Attorney General who had no desire at all to encounter the forces of the trusts in battle. No fair-minded person can deny the difficulties involved in handling this problem—perhaps it was no wonder that a handful of men in the Department of Justice asked themselves what they could possibly do to cope with forces that could muster battalions of the best legal talent

**Difficulty of
Controlling
Monopolies**

**Role of the
Department of
Justice**

in the country and were willing to spend millions of dollars to preserve their freedom of action.

After N.R.A. had been disposed of by the Supreme Court, President Roosevelt called a modern David from Wyoming and the Yale Law School to head the antitrust division of the Department of Justice. Additional funds were provided for staff and legal expenses and the division was transformed almost overnight from a slumbering state of lethargy to bewildering activity. Driving up to the Department of Justice building every morning in his rattletrap of a Ford jalopy, Mr. Arnold not only stirred Washington to amazement but galvanized his staff into unprecedented vigor. Gifted not only with a flair for the unconventional but remarkable ingenuity as well,¹ the new assistant attorney general brought to his task resourcefulness which is not ordinarily associated with the traditional public official. It was his policy to keep the corporations which were guilty of monopolistic practices guessing what his next step would be. By threatening large-scale prosecutions and building up a supporting public attitude through the publicity given to the findings of his investigators, he was able to frighten some culprits into reform. In other instances he went to the courts with his charges and obtained convictions. An effective weapon for the time being, at any rate, was to keep evidence on hand that could be used to scare trusts from proceeding with some ambitious scheme which would be executed at the expense of the public. The Department of Justice would learn of the plans and before they had been carried into effect secure grand jury indictments against the participants on the basis of the charges which had been held in abeyance. Fearing to arouse too hostile a public sentiment the monopolies usually found it expedient to abandon their new projects. How permanent the new reforms may prove is a question which only time can answer. There is only one Thurman Arnold. As the trusts become familiar with the unconventional and strange weapons which are directed against them, they may recover from their fright or develop new techniques which will render the controls obsolete. No realistic person will imagine that the task of keeping monopolies under reasonably good behavior is likely to be easy.

The National Industrial Recovery Act of 1933 has been mentioned

¹ Some idea of the fertile mind of this man is to be obtained from reading his books, *The Symbols of Government*, Yale University Press, New Haven, 1935, and *Folk-lore of Capitalism*, Yale University Press, New Haven, 1937.

in several connections in this text. Rejected as it was in 1935 by a unanimous Supreme Court, it has no practical importance at the present time. Nevertheless, it remains significant to those who are interested in the relations existing between government and business, since in many respects it represents the most ambitious scheme ever projected by the national government in this area. Some idea of the dearness of this act to the hearts of the New Dealers may be derived from President Roosevelt's own characterization of the act as "the most important and far-reaching ever enacted by the American Congress." Intended to promote the industrial recovery of the country from the depths of the depression the act set up a National Recovery Administration which the President placed under that master of epithet, Hugh S. Johnson. Business was divided up into some five hundred classes, with administrators designated for each. Representatives of the businesses within a single class got together and framed a code which, when adopted by the majority of those affected and approved by the President, had the force of law and inflicted heavy fines for violation.

Certain general requirements were laid down as binding on all businesses: minimum wages, maximum hours, abolition of child labor, collective bargaining, and so forth. Moreover, in certain instances considerable pressure was placed on code authorities to follow a designated course. The requirement of presidential approval was supposed to obviate any objectionable provisions in a code, but the President had his hands full of other matters which demanded attention and N.R.A. itself was confronted with such a bewildering task that it could scarcely know what was being done in every case. Indeed the confusion was so great that when the Supreme Court asked for copies of the codes, the government found itself unable to furnish a complete set. The result was that competition was discarded in large measure and control by the members of an industrial group was substituted. With the businesses themselves framing the rules which would govern their practices, it was, of course, entirely natural that such matters as restraint of trade and consumer interest received very little attention. Small units might complain at the codes which permitted the giants to entrench themselves even more firmly, but they were helpless unless they could muster a majority of the support. Certain businesses were well pleased with the protection which they gave themselves in their codes;¹ other

¹ For an authoritative review of the achievements and objectives of N.R.A., see Na-

businesses and the general public became very irritated at the burden imposed by the codes. Dissatisfaction had reached such a point that it was generally felt that the President would have to confess that N.R.A. had proved a failure and abandon all or most of its program when the Supreme Court relieved him of this problem by declaring the basic act unconstitutional.¹

THE DEPARTMENT OF COMMERCE

Most of the activities of the Department of Commerce relate to the conduct of private business, although the Civil Aeronautics Board is primarily concerned with transportation and the Weather Bureau has an important bearing on both agriculture and aviation as well as on general business. In general, the regulatory functions which the national government carries on in the field of business are entrusted to independent commissions, while the Department of Commerce is more positive in its approach.

The Department of Commerce is next to the youngest of the ten traditional administrative departments, but it has grown rapidly and at present is one of the more active departments. For a time its headquarters in Washington was publicized as the largest government building in the entire world. This department is now subdivided into some twelve bureaus and services and employs large numbers of persons both in Washington and the field.

The Bureau of Domestic and Foreign Commerce is one of the most interesting subdivisions among the multitude of bureaus and services which are maintained by the national government for administrative purposes. Under Secretary Hoover this bureau was expanded to such a point that it dominated the entire department and carried on far-flung activities throughout the world as well as in the United States. The very identification of this bureau with a defeated President made it somewhat unpopular with the New Dealers and for a time its staff and appropriations suffered a severe reduction. More than half of the foreign offices which it operated were closed and large numbers of commercial agents found themselves without employment as a result of the drastic curtailment. More recently the bureau has received more adequate attention, although its Foreign Commerce Service was transferred to the State Department.

Bureau of Domestic and Foreign Commerce

Report of the President's Committee on Industrial Analysis, Government Printing Office, Washington, 1937.

¹ *Schechter Poultry Corporation v. United States*, 295 U. S. 495 (1935).

Department by the President's Reorganization Plans 1 and 2 in 1939. This bureau maintains some fifty offices scattered throughout the United States for collecting data in regard to business conditions. This information is compiled in Washington and published regularly for the benefit of those who are interested. Corresponding information, though of a less detailed nature, is furnished the bureau by the representatives of the United States in foreign countries, and this is also published from time to time so that American business men and other interested persons can keep informed as to external economic levels.

The efforts of this bureau to dispose of surplus commodities abroad have been largely abandoned because of a curtailment of its activities, but they mark a certain period with indelible vividness. The success which attended the attempt of the Bureau of Foreign and Domestic Commerce to assist the raisin producers in disposing of a bumper crop to other countries received wide publicity a decade or so ago. As the world became paralyzed in the grip of tariff barriers and purchasing power sank to low levels, the glut of surpluses in the United States made the efforts of the bureau almost hopeless.

Several of the subdivisions of the Department of Commerce have to do with coastal and foreign shipping. One of these sections constructs and operates lighthouses, buoys, and other aids to navigation along the extended seacoast, the Great Lakes, and navigable rivers. Large numbers of new lighthouses have been built during recent years to replace antiquated ones which no longer proved very satisfactory. Some of these which are operated by radio control from a shore station miles distant are a far cry from the romantic and isolated lighthouses described in storybooks. The Bureau of Marine Inspection and Navigation enforces the regulations which are regarded as necessary to safe sea traffic.¹ All types of domestic vessels must be regularly inspected by the agents of this service to ascertain whether they are seaworthy, their boilers in proper condition, their lifeboats adequate both from the point of numbers and preservation, and their other equipment in keeping with minimum standards. Foreign passenger vessels must also undergo inspection when they enter American harbors, although they are not usually checked so carefully as domestic craft. In cases of accident this bureau holds investigations

¹ As a war measure this agency was transferred to the Coast Guard in 1942. It may be added that the latter had as a war measure been moved from the Treasury Department to the Navy. These changes will terminate six months after the end of the war unless other action is taken.

and attempts to discover the cause and if necessary fix a penalty on the master. Considerable improvement has been made in raising the standards of seaworthiness during recent years as a result of the public opinion stirred up by several serious ship accidents a few years ago. A Bureau of Coast and Geodetic Survey is constantly at work charting coasts, harbors, submerged reefs, and otherwise improving the charts which mariners use in piloting their ships. Considerable work has been carried on recently in revising old charts which were none too accurate and in studying the ocean floor or bed.

The Constitution provides that a census shall be taken every ten years.¹ For many years a new organization was set up every time a census had to be taken, but this proved unsatisfactory and in 1902 a permanent Bureau of the Census was created by Congress.² That is not to say that the bureau maintains a staff of thousands of full-time employees, such as is required during the few weeks when a census is being taken of the population, for that would entail great expense. However, a permanent headquarters is provided in Washington where various experts on population and statistical methods are constantly at work planning for a new census, supervising a census which is in the process of being taken, compiling the data assembled, and interpreting the information which deals with special problems. A series of volumes is published every decade setting forth the results of the census; in addition numerous special studies are made and reported from time to time. In the old days the census was primarily concerned with numbers of people, businesses, and livestock, but many additional items have been added during recent years. The 1940 census form was very carefully drafted and sought to secure adequate information in regard to home ownership, annual income, employment, and other points which are regarded as pertaining to the future program of the national government. Despite vigorous criticism from those who alleged that their privacy was being invaded, the Census Bureau carried through this task which will for the first time make it possible to have reasonably complete data relating to important aspects of the national life. The census clock which estimates the total population at any given moment and the complicated machinery for tabulating the returns are of interest to many students.

¹ See Art. I, sec. 2.

² For additional information on the history and organization of this bureau, see W. S. Holt, "The Bureau of the Census," *Service Monograph* 53, Brookings Institution, Washington, 1929.

Attached to the Department of Commerce is a research bureau which assists almost every agency of the government at some time or other. The Bureau of Standards maintains a staff of chemists, physicists, geologists, and other highly trained technicians Bureau of Standards for the purpose of investigating problems which are referred to it by the various subdivisions of the national government. Purchasing agents call upon it for reports as to the relative merits of various soaps, food products, chemicals, building materials, and the thousands of other items which the government has to purchase for its own use. Special problems may also be called to its attention. For example, the Army some years ago was concerned at the discomfort of those soldiers who occupied tents during summer nights—the temperature within would be fifteen or twenty degrees higher than the atmosphere without. After extensive study the Bureau of Standards discovered that aluminum paint applied to the surface of the tent roof would reduce the heat to a considerable extent.

The reports of the Bureau of Standards are ordinarily not made public, though they might prevent housewives from paying 15 cents for a soap which is actually no better than another soap that sells for 5 cents. However, some of its findings get out and have considerable influence in commercial fields. The discovery that aluminum paint is a barrier to the passage of heat has had an important bearing on heating houses and buildings; a few years ago radiators painted with aluminum paint wasted 10 or 15 per cent of the heat produced by the furnace. The chromium plating of steel has been widely adopted by automobile manufacturers as a result of the efforts of the Bureau of Standards to assist the Bureau of Engraving and Printing.¹

Another subdivision of the Department of Commerce encourages inventiveness on the part of the American people. Congress has decreed that those who invent or discover "any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof" may be protected in their use during a period of seventeen years. Application must be made to the Patent Office, full descriptions of the discovery must be furnished, and a fee of some \$40 must be paid in each case. Since 1930 patents may be granted to those who develop new plants, other than those which are tuber-propagated. Trade-marks and labels may also be registered with

¹ For additional information on this bureau, see G. A. Weber, "The Bureau of Standards," *Service Monograph* 35, Brookings Institution, Washington, 1925.

this office and confer protection for twenty years in interstate commerce.¹ Perpetual-motion machines are not considered by the Patent Office on the ground that natural laws rule them out. There is some feeling that a patent confers the right to manufacture and sell, but this is actually not the case. A patent protects its holder from the manufacture and sale of an invention by another; however, it does not grant the right to manufacture and sell if regulations based on the police power prohibit. More than two million patents have been issued in the United States—more than in all of the rest of the world together!²

THE FEDERAL TRADE COMMISSION

Authorized by Congress in 1914, the Federal Trade Commission is one of the ranking independent establishments of the national government. It has five members who are appointed for seven-year terms by the President with the consent of the Senate—and Congress has provided by law that members shall not be removed during their terms except for misfeasance or malfeasance in office.³ More than five hundred persons, including lawyers, statisticians, and clerks, are attached to its staff which is organized in eight divisions.⁴

The Federal Trade Commission is primarily concerned with preventing unfair business practices on the part of those persons and corporations which engage in interstate commerce, excluding railroads, banks, and other businesses for which other provision is made. In this connection it conducts extensive investigations either upon its own initiative or upon the complaint of interested parties and if it finds that there is evidence of unfair practices summons the accused person or firm to a hearing. Upon such occasions the whole commission sits in a quasi-judicial capacity, listening to the evidence which is presented to show the unfair practices and the defense which the accused makes to such charges. After due deliberation it issues a cease-and-desist order if it finds that the complaints are well founded. If the order is not complied with, agents of the commission then pro-

¹ Trade-marks registered in 1941 totaled 6,486.

² The Patent Office had granted 2,268,539 patents from the time it started numbering down to January 1, 1942.

³ See *Rathbun v. United States*, 295 U. S. 602 (1935), which upheld this law.

⁴ On the organization of the F.T.C. see W. S. Holt, "The Federal Trade Commission," *Service Monograph 7*, Brookings Institution, Washington, 1922; and T. C. Blaisdell, *The Federal Trade Commission*, Columbia University Press, New York, 1932. A chart showing the organization of this commission will be found on p. 503 of this book.

ceed to invoke the aid of the courts in penalizing noncompliance. Appeals on points of law may be taken directly from the F.T.C. to a Circuit Court of Appeals.

In addition to investigating and hearing charges of unfair business practices, the Federal Trade Commission receives regular reports from corporations other than banks and common carriers, which are engaged in interstate commerce. Upon occasion it may be asked by the President or Congress to undertake an investigation of large-scale violations of the antitrust laws or notorious records of unfair business practices. Thus somewhat more than a decade ago it spent a great deal of time investigating the public utilities of the United States, especially those engaged in the generating and sale of electric power. Its findings and recommendations growing out of this one project required something like seventy printed volumes! Finally, the commission may undertake the study of foreign trade practices that affect business in the United States.

There is considerable controversy over the accomplishments of the Federal Trade Commission.¹ Some of those who have observed its operations over a period of years express distinct disappointment that so little has been achieved, particularly in restricting monopolistic practices. On the other hand, there are those who are of the opinion that the F.T.C. has taken its tasks seriously and considering their almost staggering weight has done as well as could be reasonably expected. The commission has been directed by a fairly large number of persons during its some thirty years of existence and some of them have been more capable and courageous than others.² No great dent has been made in monopolistic practices perhaps, but business standards are doubtless higher than they would be without the efforts made by the commission to investigate and order discontinuance of the most glaring evils. In the advertising field a considerable amount of progress has been made by the commission in eliminating misstatements. Thus goods made out of cotton cannot be labeled "silkolene" or "merino" which might imply that silk and wool had been used. Furniture made out of gumwood and finished to resemble mahogany or gum which has been veneered with mahogany cannot

**Record of
Accom-
plishments**

¹ This is reflected in the two standard books on the commission. See G. C. Henderson, *The Federal Trade Commission*, Yale University Press, New Haven, 1924; and T. C. Blaisdell, *The Federal Trade Commission*, Columbia University Press, New York, 1932.

² For an interesting article on this subject, see E. P. Herring, "Politics, Personalities, and the Federal Trade Commission," *American Political Science Review*, Vol. XXVIII, pp. 1016-1029, December, 1934.

be advertised as "mahogany furniture"—in the former labels as imitation mahogany, or gum stained to resemble mahogany, and in the latter mahogany-veneered are required by the commission. Rebates, presents, expensive gifts, and elaborate entertainment are all outlawed by the F.T.C. as unfair business practices.¹ It may be pointed out that the Federal Trade Commission concerns itself largely with individual businesses, while the Antitrust Division of the Department of Justice watches combinations of business in restraint of trade.

THE SECURITIES AND EXCHANGE COMMISSION

For many years unscrupulous persons and firms sold huge quantities of more or less worthless stocks, bonds, and other securities to a gullible public and the government did little or nothing to interfere. The losses on this account following 1928 were enormous—it is estimated that they amounted to something like \$25,000,000,000.² At one time the foisting of bogus securities was mainly confined to confidence men, slickers, gold-brick experts, and shyster brokers, but during the 1920's it became so dignified that even the most important banking establishments tried their hand. For several years leading banks canvassed the South American countries, pleading with governments to float bonds which could be unloaded on the American public and even paying politicians to authorize such loans. An investigation carried on in the Senate following the crash in 1929 made it clear that well-known banks had sold securities which they knew would never be repaid. A president of one of the half-dozen largest banks in the country testified that he knew what advantage was being taken of investors but that when people wanted more than 4 per cent interest on their money they were suckers and hence fair game for anybody.³ The indignation aroused by the disclosures of the senatorial investigation coupled with the severe loss incurred by tens of thousands of people was enough to cause the passage of a series of laws beginning in 1933, and resulting in the creation of the Securities and Exchange Commission in 1934.

The Securities and Exchange Commission is made up of five members, who are appointed by the President with the consent of the Senate. Sizable offices are maintained in both Washington and Philadelphia and local offices in other large cities. Subdivisions of the commission deal with registration of securities, stock exchanges, investment houses, and foreign issues.

Composition
and
Organization

¹ These cases are reported in the *Federal Trade Commission Reports*.

² See *Senate Report 17*, 73rd Congress, 1st session, p. 2.

³ See *ibid.*

The S.E.C. has been given several important duties which relate to the interstate sale of securities of other than railroads, banks, insurance companies, and the federal, state, and local governments in the United States. Sales under \$100,000 are not covered by the law which requires the registration with the S.E.C. of securities circulating in interstate commerce. In registering securities the directors and financial officers are required to furnish a prospectus which describes the property upon which the securities are based. If these statements are false or only partially accurate, investors who suffer loss through the purchase of such securities may recover from the corporation, its directors, and its principal financial officers. Another act gives the commission authority to "correct unfair practices on security markets."¹ "Washed sales," "matched orders," "rigging," and "pools" for manipulative purposes are all banned by the S.E.C. In order to discourage speculation on a shoestring the Federal Reserve Board is instructed to assist the S.E.C. by fixing the cash margin required for loans having securities as collateral.

Functions

In 1935 Congress extended the authority of the commission by giving it jurisdiction over gas and electric holding companies which engage in interstate commerce or use the United States mails. The act provided that after January 1, 1938, holding companies coming under the scope of the S.E.C. should limit their operations to a single integrated system rather than spread all over the country, as several of the giant electric holding companies had done. The application of the holding companies to be permitted to continue as many of their operations as possible has occupied a large amount of the commission's attention for several years and even as late as 1942 the status of some holding companies was not entirely clear.²

There can be little doubt that investors are protected by the several acts which Congress has passed dealing with securities and exchanges. It is true that many of them will not bother to read the prospectuses which corporations issue, but the very fact that there is civil liability for false and misleading statements is enough to make greater care probable. The S.E.C.

Pros and Cons of the Securities Acts

¹ For additional discussion of this provision, see C.C. Rohlfs *et al.*, *Business and Government*, rev. ed., Foundation Press, Chicago, 1941, Chap. 12.

² The first real test of the "death sentence" holding company legislation involved the \$1,000,000,000 North American Company. In 1942 an attempt was made to sell its Union Electric Company of Missouri, with assets exceeding \$273,000,000, but the market did not respond. Subsequently legislation was introduced in Congress postponing the enforcement of this part of the S.E.C. program until the end of the war.

assumes no responsibility for admitting securities to registration, but it does attempt investigation and in a number of cases has either refused to register or prevailed upon the corporations to withdraw their applications. The new regulations dealing with stock exchanges do not make them particularly safe places for the uninformed, but their practices are unquestionably more aboveboard than was previously the case. Brokers, stock exchange members, and corporate officials complain bitterly at the rigidity of the regulations. They maintain that it is literally impossible to draft statements in regard to securities without making themselves personally liable for what may happen in the future. Brokers complain that their business is ruined by the strict rules and many have had to abandon business. Stock exchange seats are selling at an all-time low, with large blocks of stock being sold not on their floors but outside. It is probably too early to ascertain the truth of these complaints; there is always a tendency for those affected by new legislation to feel disgruntled at first.

In 1941 a committee of the financial interests and the Securities and Exchange Commission reported to Congress certain points of view on which they agreed and disagreed. Both S.E.C. and financiers agreed that the law should be modified in such a fashion as to provide registration of large securities offerings bought by institutions handling the funds of depositors or policyholders, thus ending "private placement" with insurance companies. It was also the opinion of both that there should be considerable simplification of registration statements, that the present proxy rules should be extended to all corporations in interstate commerce with more than 300 shareholders and more than \$3,000,000 in gross capitalization, and that the responsibility of reporting all their transactions in equity securities should be extended to the officers, directors, and principal shareholders of the above corporations. Extension of the power of the S.E.C. to secure injunctions against those having completed an act as well as those in the process of performing an act was requested along with a change in time allowed for credit given by a dealer to customers. S.E.C. proposed that its authority to enforce compliance with exchange rules, expel and suspend members, supervise elections of officers, and postpone or suspend new exchange rules be extended and that a buyer of newly issued securities have a prospectus at least twenty-four hours before being asked to buy, but the representatives of the financial inter-

**Proposals
for Securities Law
Changes**

ests did not join in these. The financial interests had certain desires in which the S.E.C. refused to concur. Among these were: the increase of the S.E.C. membership to nine; the exemption of public-utility holding companies and their subsidiaries from registration of securities; the setting aside of prospectuses after a security has been listed for some time on an exchange; the ending of the power of S.E.C. to segregate broker and dealer functions on the floor of an exchange; and the abolition of that portion of the rule on trading by insiders which permits recovery suits on profits taken within six months.¹

MISCELLANEOUS

The Constitution authorizes Congress to "fix the standard of weights and measures," but Congress has not exercised this power beyond providing that either the English pound-foot system or the metric scale may be legally employed. The Bureau of Standards keeps a "perfect yardstick" which is made of platinum and valued at many thousands of dollars. The food and drug acts prescribe that packages shall indicate their contents both as to quality and measure. However, in general it is the state and local governments that inspect the scales, pumps, and measures of business concerns to see that unfair practices are not engaged in.

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CHAPTER XXIX

THE GOVERNMENT AND AGRICULTURE

CONSIDERING the predominance of agriculture during so much of our national history,¹ the preeminent position of the United States among the agricultural producers of the world,² and the strongly entrenched farm lobby in Washington,³ it is not surprising that the national government has given much attention to this aspect of national life. Almost from the first there has been a demand that the public authorities give heed to certain agricultural problems and, since then, although at times the cry has been more insistent than at others, this has been the watchword in increasing measure. It is interesting to note the general attitude of the farmer toward government. Less dependent in general than his city cousin, he has, nevertheless, long looked to the government for assistance of one kind and another. That is not to say that he has paid a great deal of attention to all that the Department of Agriculture has advised him to do or that he has even invariably regarded with marked enthusiasm the vigorous efforts of that agency to improve his relative position in American economy. Indeed there is a large number of farmers in any community who persist in making the same mistakes year after year despite the experiments of the federal department. Furthermore, it is commonplace to find farmers growling over crop-control programs that may bring them generous government checks. Nevertheless, the attitude of the farmer toward government is basically different from that of the industrialist who wants the public authorities to keep their hands off his affairs, though he is willing to benefit from tariff favors and of course expects his property to be protected against all dangers.

¹ Not until 1920 did the census figures show a majority of the people living in urban places. With the census definition of an urban place a population of 2500, it may be argued that the country was predominantly agricultural even after that time.

² During recent years the United States has not shipped abroad the huge quantities of grain and meat which long made it one of the principal storehouses of the world. The attempts of other countries to become self-sufficient and the increasing demand in the United States have taken away much of the world market. Nevertheless, a large part of the cotton must still find a foreign market or go unused and even wheat, corn, and meat are ordinarily produced in such quantities that they could be exported in large amounts.

³ The farm lobby and its activities are discussed in Chap. 11.

No other administrative agency in the national government can match over a period of years the impressive record of the Department of Agriculture. Of course, it has made mistakes, put up with political influences, and viewed the farmer as being even more important in the American system than he probably deserves, but even so it has managed to maintain high standards. Long before other departments saw any particular need of employing highly trained technicians, the Department of Agriculture had recruited a staff of soil experts, horticulturists, agronomists, marketing specialists, agriculture economists, and a host of others. Not satisfied with merely bringing these scientifically trained people into its service, it gave them generous scope for research, made conditions so satisfactory that they remained for many years in public employment, and gradually built up a tradition of professionalism that played an important role in the entire agricultural program of the government. For example, it was the Department of Agriculture which developed a modern personnel system long before most of the administrative agencies gave any thought to that problem. Moreover, this department blazed the way for in-service training courses¹ and even now its graduate school of more than two thousand secures general recognition of its leadership in this effort. One might not associate sound budgetary practice with a department as far removed from public finance as the Department of Agriculture, yet the budgetary record of this agency has been frequently praised.²

**Impressive
Record of
the De-
partment
of Agricul-
ture**

The Department of Agriculture is one of the most elaborate of federal administrative agencies in organization. Its general form follows that of the other major old-line departments, but it is divided into numerous bureaus and services which deal with the many problems arising out of American agriculture. It would serve no useful purpose to undertake a detailed consideration of this maze of subdivisions, many of which handle functions which are highly technical in character. However, it may be well to note that an executive order issued by the President in 1942 provided for four great divisions around which the numerous agencies were to be grouped: Agricultural Marketing Administration, Bureau of Agri-

**General
Organi-
zation**

¹ See above, Chap. 24.

² Mr. Jump, the budgetary officer of the department, is frequently called upon to address groups of those particularly interested in budgetary practices.

cultural Economics, Agricultural Conservation and Adjustment Administration, and Agricultural Research Administration.

In its official publication of 1934 the Department of Agriculture classified its activities under six headings as follows: (1) research, (2) extension and information, (3) eradication or control of plant and animal diseases and pests, (4) service activities, such as weather and crop reporting; and forest and wild-life refuge administration, (5) administration of regulatory laws, and (6) road construction.¹ Road construction, weather reporting, and wild-life preservation have been transferred to other departments² during the administrative reorganization effected by Franklin D. Roosevelt. But even if the revision necessitated by the above changes is made, this classification leaves something to be desired. John M. Gaus and Leon O. Wolcott, who have recently published the most able study³ which has thus far been made of the Department of Agriculture, have suggested the following classification: (1) production, (2) land use, (3) marketing and distribution, (4) rural life, and (5) finance.⁴

AGRICULTURAL PRODUCTION

Professors Gaus and Wolcott declare that "production has been the traditional major interest of the department," adding that, while there is no bureau of that name, the Bureaus of Plant and Animal Husbandry have historically been the "very core of the department," around which "most of the other operating bureaus—and some of the auxiliary and general-staff services" have grown up.⁵ Production includes soils, plants, animals, protection from hazards, equipment, and production goals.

Some sixteen of the divisions of the Department of Agriculture, mainly in the Bureau of Plant Industry and the Soil Conservation Service, are concerned with soil. The early work of this character was carried on to a large extent in connection with state experimental stations and extension officials, although basic re-

¹ Department of Agriculture, *The United States Department of Agriculture*, Misc. Pub. No. 88, pp. 5-6, Government Printing Office, Washington, 1934.

² Road construction was moved to Federal Works Agency; weather reporting to Commerce; and the wild-life preservation to Interior.

³ This is entitled *Public Administration and the United States Department of Agriculture*, Public Administration Service, Chicago, 1940.

⁴ *Ibid.*, pp. 92-93.

⁵ *Ibid.*, p. 94.

search in the chemistry of soils was done in Washington laboratories. During the last few years a major shift in emphasis has taken place as a result of the rapid development of the Soil Conservation Service, which has its own regional and state projects. The state experimental stations are still operating, but since 1939 few additions have been made to them. Local soil conservation districts have been organized in many counties throughout the country by the Soil Conservation Service and these are now used for demonstration purposes. Erosion control, flood control, irrigation, submarginal land purchase and development, soil chemistry and physics, soil fertility, soil microbiology, hill culture, sedimentation, and drainage are some of the problems which receive the attention of the divisions of the Department of Agriculture noted above. Much of this work is done under the important Soil Erosion Act which Congress enacted in 1935 after floods and sandstorms had caused great damage in large areas of the United States.

Soil has been designated the most valuable natural resource which the United States possesses. Certainly without the abundant fertile lands scattered over much of the country, it would be impossible to maintain anything like the national economic standards which have long been associated with the United States. Perhaps the very richness of the soil resources has blinded even the farmer who is in intimate contact with land to the grave dangers of erosion and depletion. A survey made by the Soil Conservation Service in 1936 discovered that 735,000,000 acres of land—an area about seven times as large as the entire state of California—which had once been valuable for farming, grazing, or forests had been seriously damaged or entirely ruined by erosion either of the water or wind variety. When to this is added the land which has been allowed to run down because farmers have taken out as much as they could over a period of years without attempting to conserve the fertility, the situation is far more alarming than most people realize. The Soil Conservation Service has persuaded a fairly large number of farmers to organize soil conservation districts, despite the reluctance of many rural inhabitants to participate. An important program of control has been started, but it will require many years before the situation can be regarded as checked. Large areas have been “mined rather than farmed” until now very little if anything can be done to save them, beyond perhaps planting trees and shrubs which will grow even under unfavorable circumstances.

Where land is being ruined by water, it is possible to carry on several types of control. Hilly land which is planted with corn is especially subject to erosion; therefore substituting a crop which binds the soil together during the fall and winter months can contribute greatly to slowing down the rate, which if left unattended sometimes washes away hundreds of tons of top soil from comparatively small areas. New methods of plowing have been devised to check both water and wind erosion. Rock or concrete barriers may be constructed to assist in preventing severe cases of erosion from water. Agents of the Department of Agriculture have literally combed the earth to find plants that resist drought, bringing back from China, Australia, South Africa, and other dry lands thousands of specimens for experimental purposes. The tree belt in the Great Plains region is aimed at breaking winds and thus slowing the process of wind erosion, which during single years has blown away millions of tons of topsoil, leaving dust bowls behind.

The Bureau of Plant Industry and the Forest Service carry on elaborate programs which have a vital bearing on the agricultural prosperity of the United States. Divisions of the former deal with cereal crops and diseases, cotton and other fiber crops and diseases, drug and related plants, forage crops and diseases, forest pathology, fruit and vegetable crops and diseases, mycology and disease survey, nematology, plant exploration and introduction, sugar-plant investigations, tobacco and plant nutrition, dry-land agriculture, and western irrigation agriculture. In cooperation with the land-grant colleges and state experimental stations, an effort is constantly being made to improve the varieties of grains, vegetables, and fruits grown in the United States, with the result that apricots able to thrive in the bleak lands along the Canadian border and earlier ripening corn and wheat have been developed. Diseases that attack wheat, corn, cotton, tobacco, fruit trees, and other plants have been carefully studied and in many cases effective treatment for their handling has been devised. One of the most dramatic functions carried on by this branch of the Department of Agriculture has been mentioned above in connection with rehabilitating the wind-swept areas of the Southwest. Agents of the department have roamed throughout the world to discover plants that might be suitable for cultivation in the United States. The majority of the specimens which they collect and send to the United States for experimentation do not prove to be of any particular value,

but a comparatively long list of products, now more or less taken for granted, have been introduced by these means.

The Department of Agriculture has two large bureaus primarily interested in livestock: the Bureau of Animal Industry and the Bureau of Dairy Industry. The former concerns itself with the im-
Animals
provement of beef cattle, dairy cattle, swine, sheep, goats, horses and mules, and poultry. Inferior livestock breeds which eat their heads off yet return very little meat, milk, eggs, or fibers have been displaced to a considerable extent by superior breeds developed by the Bureau of Animal Husbandry and other interested agencies. Much attention has been given to animal nutrition, tuberculosis eradication, the use of serums, tick eradication, and the hoof-and-mouth disease.¹ The Bureau of Dairy Industry has been active in developing milk-producing, as opposed to beef-producing cattle and in addition has investigated the problem of feeding for milk production, dairy management, milk pasteurization and handling, and milk marketing.²

The aforementioned plant and animal services do concern themselves with diseases but rather incidentally to other activities. The Bureau of Entomology and Plant Quarantine concentrates
Protection
from
Hazards
on pests and parasites which cause serious damage to various crops. It conducts surveys to ascertain the extent of damage inflicted by various insects and studies insects that attack cereals, cotton, trees both of the forest and the orchard variety, and truck and garden crops. Fruitflies, gypsy and brown-tail moths, Japanese beetles, Mexican fruitflies, pink bollworms, Thurberia weevils, and the screwworms are of such importance that they have divisions of their own in the bureau. Other divisions administer domestic plant quarantines,³ either hiring directly or granting funds to the states to employ persons to stop all cars and trucks at certain points and examine them for plants which may be carriers of pests into hitherto unaffected areas. Foreign parasite control and foreign plant quarantines are also handled by this bureau.

The Department of Agriculture also interests itself in the buildings and equipment of farms. The Bureau of Agricultural Chemistry and Engineering maintains divisions which deal with mechanical equip-

¹ Publications of this bureau include: *Essentials of Animal Breeding*, *Livestock for Small Farms*, *Feeding Cattle for Beef*, *Swine Production*, and so forth.

² See its reports on *Dairy Herd Improvement*, *Dairy Cattle Judging*, and so forth.

³ For additional information on quarantines, see *List of Intercepted Plant Pests*, published in 1939.

ment, structures, plans and service, cotton ginning, and fertilizer. Bulletins are published reporting their investigations about corncribs, ventilation of dairy barns, bulk storage of small grains, use of concrete on the farm, rat proofing, wind-resistant construction of farm buildings, roof coverings for farm buildings, greenhouse heating, preventing gin damage to cotton, and so forth.

Much better known to the general public than the activities so far examined are the various attempts to control crop production so that prices would be reasonably high and tremendous surpluses avoided.

Various laws looking toward this end were passed prior to 1933, but the Agricultural Adjustment Act far exceeded these in scope and stirred up widespread interest on the part of the rank and file of the people. The Supreme Court ruled that this statute was beyond the power of Congress to enact and hence declared it null and void.¹ Inasmuch as the act is therefore primarily of historical importance at the present time, there is no justification for discussing it in any detail here. However, it may be noted that the government maintained that the low prices of farm products contributed to the depressed economic conditions of the entire country. The fact that farm prices were low, ran the argument, kept the farmer from buying relatively high-priced manufactured goods. The farmer was selling cheap and buying dear, both to his own and the industrialists' detriment. In order to raise farm prices to a level more nearly at parity with manufactured goods as during the period 1909-1914, there was devised an elaborate set of plans which were to limit the production of corn, wheat, cotton, hogs, and so forth. Farmers were persuaded to plow under crops already planted and to kill surplus pigs in return for subsidies paid by the national government from the proceeds of processing taxes levied on cotton goods, meat products, and cereals. Some three million farmers participated in the program, withdrawing about forty million acres from cultivation. After one year farm prices had increased almost 40 per cent and the purchasing power of the farmer had gone up about one-fifth, according to the federal administrator.² But the cry that went up from legions of American people must have reached the very heavens. It was branded as little short of criminal to

¹ See *United States v. Butler*, 297 U. S. 1 (1936).

² See C. C. Davis in the *New York Times*, June 4, 1934. Also on this subject, see S. C. Wallace, *The New Deal in Action*, Harper & Brothers, New York, 1934, Chap. 11.

kill livestock and to destroy farm commodities at a time when large numbers of people were undernourished. A drought the next year was hailed as a sign from providence that crop control was unhalloed.

After A.A.A. and its accompanying acts had been declared unconstitutional, the national government very shortly took steps to preserve as much of the ground that had been gained as possible. After the If a direct control plan could not be upheld, perhaps it A.A.A. would be possible to tie a program up with the Soil Erosion Act of 1935 which was generally regarded as a valid exercise of federal authority. In February, 1936, Congress passed a Soil Conservation and Domestic Allotment Act which aimed at bringing farm prices to the level of the most prosperous period of agriculture, 1909-1914, and into parity with prices of manufactured goods. This act was to be distinguished from the former in that it stressed positive rather than negative controls. No longer were crops actually planted to be plowed under or pigs slaughtered by the thousand; rather agricultural production was to be planned in such a manner that "an ever-normal granary" might be available, with prices at levels that would be encouraging to the farmer but not too burdensome to the consumer. To avoid national shortages induced by crop failures it was decided not to cut the margin so closely as had been done under A.A.A. An annual appropriation of \$500,000,000 directly from the Treasury was provided to reward farmers who would plan their crops in such a way as to meet federal standards. Payments of something like \$10 per acre were made to those farmers who agreed to take land ordinarily planted to wheat, corn, tobacco, and cotton out of such cultivation. But it should be noted that this land need not lie idle, for they are permitted to plant clover, alfalfa, and other legumes which have the effect of restoring and building up the soil.

The planting of 1935 was used as a base to remove from cultivation acreages of 15 to 35 per cent of the former crops in which a great oversupply has confronted the country. During the first two years of this program the national government entered into direct agreements with individual farmers and paid them subsidies out of the federal Treasury. Beginning with 1938, however, the states have been used as agents and federal subsidies of 50 per cent have been granted to those states which have approved soil-conservation crop-control programs. The states in turn sign up the farmers and disburse the money. This act

was upheld by the Supreme Court as valid.¹ In 1938 a more extensive act was passed by Congress which has a large bearing on production but is more directly related to marketing and distribution and will be discussed in that connection.

LAND USE

It is only within the last few decades that the American people have become at all conscious of the land-use problem. For more than a century the public lands were so vast that the government was only too glad to give land to those who would undertake to homestead it. As the frontier passed, the public lands suitable for cultivation ran low, but even so it required some time to bring the importance of land use to the attention of the government. In 1918 a division of land economics was finally established in the Office of Farm Management and this later became a part of the present Bureau of Agricultural Economics. In 1921 the Secretary of Agriculture appointed a departmental committee to survey lands not being used for crop production. In 1924 the Secretary devoted a section of his annual report to this problem, stating that "we are beginning to see that a healthy and prosperous rural life must be based on sound use of land."² In 1931 a National Conference on Land Utilization was called by the Secretary of Agriculture and the Association of Land Grant Colleges to discuss the problem. Almost at once after 1933 several agencies, including C.C.C., F.C.A., P.W.A., T.V.A., R.E.A., and W.P.A., were set up by the national government and developed programs relating to various aspects of the use of land. In 1935 Congress finally passed the first comprehensive law dealing with the subject—the Soil Erosion Act. Although soil-erosion work was originally placed under the Department of the Interior, it was moved in 1935 to the Department of Agriculture. Its labors have been described elsewhere.³

The federal and state governments have recently displayed not a little interest in the problem of land use, although what has thus far been done is scarcely more than a drop in the bucket. A significant step forward was made when the Mt. Weather agreement was adopted in the summer of 1938. The Department of Agriculture and the land-grant colleges pledged themselves to cooperate in an effort to set up

¹ See *Mulford v. Smith*, 307 U. S. 38 (1939); *United States v. Rock Royal Corp.*, 307 U. S. 533 (1939); and *H. P. Hood & Sons v. United States*, 307 U. S. 588 (1939).

² See *Yearbook of the Department of Agriculture*, Government Printing Office, Washington, 1926, p. 113.

³ See Chap. 32.

local organizations of farmers throughout the country. Agricultural land-use planning committees have already been set up in many counties and more are being arranged. The states provide guidance through the extension departments of the land-grant colleges for these local committees and the entire program is led and integrated by the Department of Agriculture. In 1938 the Department of Agriculture was reorganized with a view to "meet the increasingly urgent demands for better coordination of all land-use activities."¹

MARKETING AND DISTRIBUTION

As recently as 1922 a Joint Commission of Agricultural Inquiry set up by Congress stated that "there were practically no fundamental data of government or public character with respect to marketing and distribution," that it had had to "undertake a pioneering effort to secure from original sources the basic facts," and that it was "convinced that the problem of distribution is one of the most important economic problems before the American people."² For many years it has been apparent that the consumer needed the products of the farmer and ordinarily paid high prices for them, despite the fact that the producer sometimes could not get rid of his products at all and even when he could the prices were far below what the retail price would indicate. Then, too, there were the problems of inferior food products and undernourished people who could not afford adequate food despite the national surpluses. All of these have received the attention of the Federal government during recent years and much has been accomplished.

Since 1906 federal inspection of meat intended for shipment in interstate commerce has been mandatory, although until 1938 a provision permitting "animals slaughtered by any farmer on the farm" to be exempted was used by small wholesale packers as a loophole. During the 1890's considerable agitation for food and drug inspection led to the passage in 1906 of a fairly extensive law conferring the duty of inspection on the Department of Agriculture as far as interstate shipments of certain goods were involved. As the years passed, however, various evasions were apparent since cosmetic and patent-medicine manufacturers found it possible to promise virtually everything under the sun for their wares. Some seven amendments

¹ See Gaus and Wolcott, *op. cit.*, p. 159.

² *House Report*, No. 408, 67th Congress, 1st session.

were added to the act from time to time. In 1930 the McNary-Mapes Amendment made it possible to set up standards for canned goods which had been labeled in so many ways that it was difficult to tell what grade was being purchased. The most important of these amendments was the Federal Food, Drug, and Cosmetic Act of 1938 which added extensively to the regulatory powers of the Department of Agriculture, giving it power to determine standards of quality in all foods except dried or fresh fruits, vegetables, and butter.¹

The Agricultural Adjustment Act passed by Congress in 1938 contained an elaborate provision for determining crop quotas for individual farms. The local committees which had been set up in 1933 had collected large bodies of data in regard to the production of individual farms; on this basis individual quotas were to be imposed on each farmer under the terms of the act of 1938. Those farmers who observed these quotas would receive parity payments in addition to the amounts given for conservation practices. The 1938 act also authorized the Secretary of Agriculture to fix marketing quotas for tobacco, corn, wheat, cotton, and rice when it appeared that the total supply of a commodity would exceed the normal supply by a stated percentage. These quotas are apportioned among the states, counties, and farms on the basis of the records collected since 1933, but no quota can become effective if one-third of the producers affected oppose it in a referendum. This act also created a Federal Crop Insurance Corporation to insure wheat producers 50 to 75 per cent of their normal production in return for premiums payable in wheat.

The A.A.A. program for 1942 was drastically revised to meet the exigencies of the national emergency—farm production was scheduled to increase from \$9,120,000,000 in 1940 to \$13,000,000,000, an all-time high. The Department of Agriculture announced that “the total allotments are being eliminated in most of the country in order to promote increased acreages of crops called for in the defense program, but are being retained in designated surplus feed-producing areas to stabilize feed production.”² As in previous years acreage allotments were set up for corn, cotton, peanuts, rice, tobacco, and wheat and farmers were given subsidies for planting

¹ By reorganization Plan 4 (April 11, 1940) the Pure Food and Drug Administration was transferred to the Federal Security Agency.

² Reported in *New York Times*, August 18, 1941.

within these allotments.¹ However, the production of hogs and dairy and poultry products was not limited; indeed it was encouraged. Five types of minimum conservation plans were drawn up for application by the state A.A.A. committees in consultation with the national Agricultural Adjustment Administration. Full payment for compliance with a farm's special crop allotments was made contingent on full achievement of the goals included in one of the plans. In surplus feed-producing areas farmers who expect to qualify for payments must devote at least 25 per cent of their crop land to conserving crops during the entire year of 1942. In other areas where surplus feed is not a problem, the same plan may be used except that the proportion is decreased to 20 per cent. A third plan calls for planting at least 25 per cent of the crop land to erosion-resisting crops. A fourth plan, known as the "Alabama plan" because of its use in that state, stipulates a "well-rounded farm conservation plan which over a period of years will conserve the soil and increase its productivity."² The final plan seeks to relate soil-building performance to compliance with crop allotments. "Under this plan, the payment earned for complying with the crop allotments will be reduced in the same proportion that soil-building earnings fall below the farm's maximum soil-building allowance."³

Despite the program of control administered by the Department of Agriculture large surpluses of certain food products accumulated, while there were on hand millions of bales of cotton in excess of domestic requirements.⁴ Inasmuch as it was estimated that a poverty-stricken one-third of the population was not receiving adequate food, an attempt was made to distribute some of the surplus among the needy without depressing the market price. The Surplus Commodities Administration⁵ was given a substantial amount which it used to buy food supplies which were particularly plentiful and suitable for the use of the poor. Something like a billion pounds of various foodstuffs were purchased in a single year and distributed among those unable to buy them. Beginning in 1939 the Department of Agriculture began to set up a system of food-stamp centers at which

¹ Allotments in 1942 were increased as follows: peanuts from 3,500,000 to 5,000,000 acres; soy beans from 7,000,000 to 9,000,000 acres; rice from 1,200,000 to 1,320,000 acres; flue-cured tobacco from 762,000 to 843,000 acres; etc. Total acreage was to be increased by approximately 12,000,000 as a national defense measure. See the *New York Times*, January 16, 1942.

² *New York Times*, August 18, 1941.

³ *Ibid.*

⁴ The foreign market which once took so much of our cotton was unable to absorb its normal quota because of trade barriers, high American prices, and so forth.

⁵ The name of this prior to 1940 was the Surplus Commodities Corporation.

those on relief could buy any article they desired with one kind of stamp which they received and an additional supply of certain specified foods up to 50 per cent of the value of the former without additional charge. Started in Rochester, New York, the plan worked out so well that it spread rapidly to the larger cities of the country.¹

RURAL LIFE

While not so much has been heard of the current activities of the Department of Agriculture in improving living conditions in rural areas as about crop control, nevertheless, the achievements have not been inconsiderable. Professors Gaus and Wolcott summarize the program in this field as follows: "various forms of assistance to various types of what were termed 'disadvantaged rural families'; loans and grants, with farm and home plans to assist in rehabilitation; some experiments in the resettlement of farm families in communities; assisting tenants to become farm owners or to obtain a better type of lease; and some effort to enforce minimum standards or conditions for farm laborers, including migratory farm labor."² In 1939 the Rural Electrification Administration was transferred to the Department of Agriculture and the extension of electrical facilities among farm homes was integrated into the general program. Of course, not all of the responsibility for improving rural life is entrusted to the Department of Agriculture, for, as we have already noted,³ the Federal Security Agency, the T.V.A., and the Labor Department also are active in this field.

A very extensive attempt is being made to "develop desirable standards for home and community living" in rural areas. County demonstration agents are maintained in large numbers of counties throughout the United States—approximately 2,500 of these agents are employed by the state extension services with the assistance of the federal department. They have recruited something like two hundred thousand volunteer leaders to assist them and reach at present perhaps one-fifth of all farm homes. Clubs have been organized among the farm women to further the move-

Home
Demon-
stration
Programs

¹ In the month of January, 1942, 3,500,000 persons qualified for these stamps and were given some \$9,400,000 worth of farm products, thus increasing their food about 50 per cent. Blue stamp purchases included 28,000,000 pounds of potatoes, 27,000,000 pounds of flour, 10,250,000 pounds of fresh pork, 3,565,000 dozen eggs, and 2,180,000 dozen oranges.

² See *op. cit.*, p. 227.

³ See Chaps. 30, 31, 32.

ment. Numerous 4-H Clubs enroll the farm boys and girls for civic and vocational education and recreation.¹

In 1935 a Resettlement Administration was created to take over the subsistence homesteads which the Interior Department had laid out. A division of land utilization in this Administration was **Rehabilitation** authorized to purchase submarginal lands and to employ needy rural inhabitants on reforestation, road building, and so forth. A rehabilitation division attempted to make farmers acquainted with approved principles of farm management, budgeting, and other essentials to self-supporting farming. In 1937 the Farm Security Administration was created in the Department of Agriculture to take over the functions of the earlier Resettlement Administration as well as others assigned to it. Up to 1939 loans totaling almost \$250,000,000 had been granted some 650,000 farm families for the purchase of farms.² About two thousand county offices are maintained which are supervised by district, state, and regional³ offices. This administration as a side line operates camps for migratory farm workers, especially in the Pacific Coast region.

AGRICULTURAL CREDIT FACILITIES

As far back as 1916 the demand for improved agricultural credit became so insistent that Congress authorized the establishment of banks under a Farm Loan Board. In 1932 the R.F.C. supplemented these banks with twelve regional agricultural credit corporations to make loans directly to farmers and livestock producers. Shortly after Franklin D. Roosevelt assumed office, he decided that it was not desirable to have agricultural credit facilities spread over several agencies of government and issued an executive order "to bring under one organization all federal agencies and instrumentalities concerned with agricultural credit." This agency was designated the Farm Credit Administration. The Farm Credit Acts of 1933 and 1937 extended the scope of the F.C.A., especially in the cooperative field, but left it as an independent establishment. The reorganization of 1939, already re-

¹ For additional discussion of these clubs, see Department of Agriculture, *Boys' and Girls' 4-H Club Work*, Misc. Circ. No. 77, and *Organization of 4-H Club Work*, Misc. Circ. No. 320, Government Printing Office, Washington.

² The exact amount as of January 1, 1939, was \$232,410,369. Of this amount some \$72,000,000 had been repaid by that date.

³ The country is divided into twelve regions for this purpose. The economy drive of 1942 focused more than ordinary attention on F.S.A. Action by the House Appropriations Committee pointed to a 50 per cent cut in funds.

ferred to on a number of occasions,¹ deprived the Farm Credit Administration of its independent status and placed it under the Department of Agriculture, though not "an integral part" of that department.² The relations between the governor of the F.C.A. and the Secretary of Agriculture soon became strained because the former insisted that "the principal job of the Farm Credit Administration is not the lending of government funds, but the supervision of a group of self-sustaining cooperative credit institutions in which the farmers of the country have more than \$130,000,000 of their own hard-earned money invested. . . . The functions of the Farm Credit Administration are more closely comparable to those of the Federal Reserve Board or the Federal Deposit Insurance Corporation than to those of the Department of Agriculture."³ The governor resigned in protest over the insistence of the Secretary of Agriculture that he had "to integrate the policies of the Farm Credit Administration and those of the Department of Agriculture to the general policy of the Government of the United States in respect to all agricultural problems."⁴ Whereupon a new governor was appointed who accepted the Secretary's point of view.

The United States is divided into twelve districts for purposes of administering the various provisions relating to agricultural credit.

**Organiza-
tion of
Credit** In each of these districts there are the following banks: a Federal Land Bank, a Federal Intermediate Credit Bank, a bank for cooperatives, and a production credit corporation, all of which are under the Farm Credit Administration. The land banks, which have been in operation since 1916, lend money to groups of ten or more farmers organized into national farm loan associations on long-term arrangements, usually for the purchase of land. The Federal Intermediate Credit Banks furnish short-term credits to individual farmers on the security of grain, livestock, and other farm commodities. The banks for cooperatives assist the twelve thousand or so cooperative buying and selling associations among the farmers.

**Results of
the Credit
Program** It would be difficult to maintain that the national government has not been generous in furnishing credit to the farmers of the country. The powerful farm lobby has long been able to get out of Congress almost anything that it has desired and

¹ See, for example, Chap. 23.

² This was done under Reorganization Plan 1 and took effect July 1, 1939.

³ Quoted by Gaus and Wolcott, *op. cit.*, p. 259.

⁴ *Ibid.*

it has not been modest in its requests. A good many billion dollars have been advanced in the form of credits of one kind and another, the bulk of which will, of course, be repaid eventually. Large numbers of farms have been saved to their owners through such agencies of the national government as the Federal Farm Mortgage Corporation, which was set up in 1934 with a capital of \$200,000,000 and authority to issue bonds backed by the government credit to the extent of \$2,000,000,000. Some of the activities have been less justifiable than others. Few would question the wisdom of furnishing long-term credit for the purchase of land, despite the fact that deflated farm values have caused the mortgages in certain cases to be greater than the market price of the farm. Short-term loans for meeting expenses between the period of harvest and sale are also quite legitimate. The crop-production loans, however, are viewed by some competent persons as of doubtful validity. Pressure is brought on the Department of Agriculture to fix the loan value of cotton, corn, wheat, and other commodities considerably above the market price so that generous loans may be obtained. Then if the market does not advance to a point at which the crops can be disposed of for more than the loans, the government is left holding the bag. The attitude of the farmer seems especially subject to criticism in this connection since several million bales of cotton and hundreds of millions of bushels of wheat have been accumulated by the government as a result of these loans and its attempts to keep prices high. A bill passed by both houses of Congress in August, 1941, supported of course by the farm lobby despite the disapproval of the Secretary of Agriculture and the Treasury, provided that during the period of national emergency when there would be opportunities to dispose of these huge surpluses the Federal government could take no steps to liquidate its holdings. Fortunately, President Roosevelt had the courage to veto this bill, which he characterized as an example of the worst type of short-sighted selfseeking. Nevertheless, a similar bill was passed by Congress in 1942, despite a special radio appeal by the President, pointing out the danger of extreme inflation and pleading for the support of the farm population.

Indirectly related to farm credit has been the legislation enacted by Congress providing for moratoria on the foreclosure of **Mortgage** farm mortgages. The first of these attempts was declared **Legislation** unconstitutional by the Supreme Court,¹ but a revamped bill, which

¹ *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555 (1935).

extended many of the same advantages to farmers, was upheld.¹ This legislation was not only important in giving farmers time in which to raise money to meet mortgage payments; it conferred a powerful weapon which they could use in persuading their creditors to scale down the payments and even the principal. Rather than go through the complicated process which the law required, many holders of mortgages preferred to make generous settlements with their debtors. In this way thousands of farmers were able to reduce their mortgages to a point where it was possible to carry them.

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¹ *Wright v. Vinton Branch Mountain Trust Bank*, 300 U. S. 440 (1937). The distinction the court found between the two laws was that the first had the effect of taking creditors' substantive rights without due process of law while the second more carefully safeguarded them in accordance with the suggestions of the earlier decision.

CHAPTER XXX

THE GOVERNMENT AND LABOR

THE national government has been somewhat active in the labor field for approximately half a century,¹ although it was not until 1903 that formal recognition was extended by establishing the Department of Commerce and Labor. In 1913 a further step was taken when the labor section of this department was organized into a Department of Labor which has since that time ranked as one of the ten major administrative departments of the national government. The Labor Department is even today distinctly smaller than the Treasury, Agriculture, and Interior departments and being the most recently established has the least precedence. Nevertheless, its staff and appropriations have been increased as the years have passed, and it currently receives some \$12,000,000 per year. Indeed it may be stated that the last decade has witnessed a most notable expansion in the activities of the national government in the field of labor. By no means all of the new program has been entrusted to the Department of Labor, however, for the National Labor Relations Board has very frequently occupied the center of the stage.

The influence of organized labor in the sphere of government has been one of the striking features of the last decade. At a time when the government has had a disposition to subject business to the most devastating criticism as well as increasingly stringent regulation, it has given official approval to organized labor and aided its growth. Partially as a result of this attitude the membership of labor organizations has undergone a tremendous expansion and reached a point far above the high-water mark of any previous period.² One of the two gigantic national labor groups was so appreciative of the favors received that it contributed more than \$500,000 to the treasury of the Democratic

**Recent
Attitude of
Govern-
ment
toward
Organized
Labor**

¹ As early as 1882 Congress passed the Chinese Exclusion Act in order to protect native labor against the inroads of cheap coolies from South China. In 1885 Congress carried this protection further by prohibiting contract laborers from Europe from entering the United States.

² At the beginning of 1942 A.F. of L. and C.I.O. together could claim approximately ten million members.

party.¹ Even during the trying labor troubles which interfered with the national defense program during the critical years beginning with 1940, the President was quite reluctant to consider any move which would unduly check the freedom of organized labor. Bills to take over industrial property received White House approval, but bills aimed at outlawing strikes in munition plants, although warmly supported by many members of Congress and large elements of the general public, were viewed with considerable distrust and suspicion by the administration.

Several explanations have been offered of the intensely warm sympathy which the national government has recently displayed toward labor. There are those who attribute it largely if not entirely to political considerations. Organized labor controls many votes and boldly proclaims that those votes are cast judiciously, rewarding those who have been its friends. Labor has recently aided the Democratic party both with its votes and its money, while business has for the most part been highly critical of and even bitterly opposed to the party in power. So it is argued, what is more natural than that labor should be favored even when it engages in questionable practices? It is entirely possible that the friendly relations between labor and the Democratic party have contributed to the official attitude. The exceedingly cordial relations which existed between the President and certain powerful labor leaders in 1936 became somewhat strained by 1940 and it will be recalled that John L. Lewis went so far as to desert Franklin D. Roosevelt shortly before election day.² The majority of the labor-union members voted for Mr. Roosevelt in 1940, but there were important defections. Some observers believe that the official attitude toward labor goes much deeper than a mere return for support received at the polls. They see the President's attitude as a recognition of the vital role of labor in a country with democratic political institutions. Moreover, they account for the disposition to tolerate the irresponsible tactics of certain wings of organized labor on the ground that labor had not received fair treatment during the many years prior to 1933. Hence the President feels that it is his duty to even up the scales, taking from business with one hand and giving to labor with the other.

¹ C.I.O. contributed some \$600,000 to the Democratic party in 1936.

² A few days before the election in November Mr. Lewis purchased at heavy expense the radio facilities of one of the national chains and broadcasted his criticisms of Franklin D. Roosevelt and his reasons for supporting Wendell Willkie.

THE DEPARTMENT OF LABOR

The Department of Labor is headed by a secretary who is a member of the President's cabinet. Until 1933 there was a tradition that the secretary should be a person who had had at least fairly close connections with organized labor. As a matter of fact, newly elected Presidents ordinarily consulted the leaders of the American Federation of Labor before nominating to the post. In 1933, however, much to the consternation of organized labor, Franklin D. Roosevelt decided to bring in his old associate, Madame Perkins, to head the Labor Department. She had had rich experience in the welfare field in the government of New York state and brought with her an impressive background for some aspects of the work of the federal Department of Labor, but she lacked that primary qualification which labor set—she was not herself a member of a labor organization.

**General
Organization**

For purposes of administration the department is divided into bureaus and services which correspond to those to be observed in other administrative departments. The reorganization which was effected by the President during 1939 and 1940 took two of the more important of these subdivisions away from Labor. The Immigration and Naturalization Service was transferred to the Department of Justice, while the United States Employment Service was moved to the Federal Security Agency.¹

The Department of Labor is expected to “foster, promote, and develop the welfare of wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.” Particularly now that the Immigration and Naturalization Service has been moved to the Department of Justice, its current activities are closely in keeping with those general aims. Needless to say, many of its problems are so complicated that no immediate solution or even amelioration is feasible. Nevertheless, despite the fact that much of the direct authority pertains to the states under the police power, the federal department has been able to show substantial accomplishments over a period of years.

**General
Functions**

As far back as 1885 a Bureau of Labor Statistics was set up to collect information in regard to employment, cost of living, hours, wages, strikes, industrial accidents, and many other labor problems. When

¹ The latter shift was ordered in Plan 1 effective as of July 1, 1939; the former transfer was part of Plan 5 effective as of May 22, 1940.

the Department of Labor was organized, this bureau was, of course, included therein. It has performed valuable services not only for its own department but for other agencies interested in working conditions. Obviously it is necessary to have such information before programs can be drafted or laws enacted, that is, if serious errors are to be avoided. Unfortunately this bureau has not always had a very adequate budget and hence has at times not been able to keep abreast of its duties. It received devastating criticism in the early 1930's when it announced unemployment figures which were later shown to be at least 50 per cent under the actual totals. Perhaps it should be added that some of its studies involve unusual difficulties. Unemployment statistics, for example, present all sorts of problems which would try the resources of any agency. A larger staff has been provided to keep track of employment figures, but even so during 1937-1940 there was a raging controversy between the Bureau of Labor Statistics and such organizations as the Chamber of Commerce of the United States and the National Association of Manufacturers, which maintained that actual unemployment was far under the levels reported by this bureau.

One of the most efficient subdivisions of the Department of Labor—indeed one of the top ranking agencies in the entire national administrative setup—is the Children's Bureau.¹ This bureau has had the good fortune to be directed by a succession of very able women whose names have been known throughout the country.² Its staff has not been large, but it has been carefully selected from those who have had a considerable amount of professional training in child care. This bureau has been active in studying juvenile delinquency, the employment of children in industrial plants and mines, child hygiene, and other related problems. It has made a very valuable contribution to American life by the preparation and publication of millions of copies of an extensive booklet dealing with the care of small children. Thousands of children during the last two decades have literally been brought up on the basis of this manual, which is readily obtainable from the Children's Bureau. Scientific discussions of the feeding of young children, childhood diseases, standard weights and

¹ For a study of this bureau which is somewhat out of date but still useful, see J. A. Tobey, "The Children's Bureau," *Service Monograph* 21, Brookings Institution, Washington, 1925.

² Katherine Lenroot and Edith Abbott may be cited as examples of able heads of this bureau.

heights, proper clothing, and the various methods of training are brought together within two covers and couched in easily understandable terminology. Especially in the case of children living in rural districts and small towns far from a child specialist, the instructions and advice provided by this booklet have been of the greatest assistance to responsible parents. During recent years the Children's Bureau has been expanded in order to supervise the child-health, child-welfare, and crippled children's program of the Social Security Act of 1935.¹

Corresponding to the Children's Bureau there is a Women's Bureau² which is charged with studying and improving the conditions of women wage earners. This subdivision of the Department of Labor is less well known than the Children's Bureau and has not in general built up anything like as excellent a record. It was not set up until 1920 and hence has not had so long a period in which to demonstrate its efficiency. More than that, it has ordinarily not matched its sister bureau in leadership and staff. Nevertheless, its studies of various problems relating to the employment of women, its conferences, and its efforts to stimulate state agencies have been valuable.

A third subdivision of the Department of Labor has little direct authority, but it has exerted an influence on industrial commissions, on state labor departments, and on public opinion through its efforts to improve standards of employment. The various studies which the Division of Labor Standards has made are communicated to those state and local agencies which are immediately entrusted with inspecting industrial plants.

Another subdivision of the Department of Labor, the Conciliation Service, has been overshadowed recently by the National Labor Relations Board and the National Defense Mediation Board, but it handles a good many cases of labor disputes every year. Before controversies arising between labor and management reach a stage of newspaper publicity, it is sometimes possible to iron them out by skillful conciliatory efforts. The agents of the Department of Labor are available for this service and ordinarily take the initiative in offering their assistance even in cases involving no

¹ For a fuller discussion of this phase of the Children's Bureau's work, see Chap. 31.

² The early work of this bureau is treated in G. A. Weber, "The Women's Bureau," *Service Monograph 22*, Brookings Institution, Washington, 1923.

interstate commerce. Newspaper stories give the impression that the efforts of the conciliators sent out by the Department of Labor are usually futile, but this is scarcely a fair picture. The industrial disputes that make the front pages of the newspapers are those which are so complicated that the modest endeavors of the Conciliation Service ordinarily do not suffice to bring about a settlement. But it settles hundreds of cases of minor character which do not reach an acute enough stage for the newspapers to play them up. The Conciliation Service interested itself in 3,751 strikes, lockouts, and disputes, in 1940 and succeeded in ironing out the differences in about 97 per cent of them.¹

Perhaps the most publicized subdivision of the Labor Department during the last few years has been the Wages and Hours Division, which was provided for by Congress in the Wages and Hours Act of 1938. Although Congress has at various times attempted to regulate wages and hours, it has been checked by the Supreme Court on the basis that manufacturing, mining, lumbering, and related fields are not included under the commerce power of the national government.² In 1933 the National Industrial Recovery Act, which President Roosevelt designated as "the most important and far-reaching ever enacted by the American Congress," sought to limit hours of labor, fix minimum wages, and otherwise regulate labor conditions, but despite its operation for some two years it finally had to be abandoned when the Supreme Court declared it null and void.³ After this experience of many years of adverse decisions, it seemed that federal activities in this field were permanently ruled out. Then the Supreme Court became more liberal in its interpretation of the Constitution and the Roosevelt appointees displaced several of the most conservative of the judges. Consequently in 1938 Congress again tried

¹ For annual figures, see the *Annual Reports of the Secretary of Labor*, Government Printing Office, Washington.

² For example, see the following cases: *United States v. E. C. Knight Co.*, 156 U. S. 1 (1895), which though concerned with the Antitrust Act set the broad precedent that sugar refining in Pennsylvania was not in interstate commerce; *Hammer v. Dagenhart*, 247 U. S. 251 (1918), concerned with the Child Labor Law held that cotton mills were not in interstate commerce; *United States v. Butler*, 297 U. S. 1 (1936), held the A.A.A. processing taxes invalid because agriculture was not in interstate commerce; *Schechter Poultry Corp. v. United States*, 295 U. S. 495 (1935), threw out the N.R.A. partly on the ground that retail selling was not in interstate commerce; *Carter v. Carter Coal Co.*, 298 U. S. 238 (1936) concerned with the Bituminous Coal Conservation Act held mining not to be interstate commerce.

³ *Schechter Poultry Corp. v. United States*, *supra*.

its hand at regulating certain aspects of this problem, establishing the Wages and Hours Division of the Department of Labor to administer the law. This time it was successful.¹

The Wages and Hours Division is somewhat less integrated into the Department of Labor than the subdivisions thus far discussed. Its administrator has extensive authority in his own name and is only generally responsible to the Secretary of Labor. A large staff has been recruited to handle the arduous tasks which are involved in carrying out the provisions of the act.

The act of 1938 which is often referred to as the "Fair Labor Standards Act" applies to workers—in 1941 some 15,500,000 altogether—who are employed in manufacturing, mining, transporting, handling, or otherwise dealing with goods which move in interstate commerce. Any occupation which is necessary to the production of the above goods also is brought under the terms of the act along with employees in interstate transportation, transmission, and communication. Agricultural laborers, clerks employed in retail stores primarily engaged in business within a single state, fishermen, domestics, professional people, and employees of interstate carriers² are specifically excluded from its operation. Oppressive child labor is prohibited, which has been held to include children under sixteen years of age except in those cases in which the Children's Bureau has certified that the ages of fourteen and fifteen years are sufficient.³ A forty-hour⁴ week and a minimum wage of 40 cents per hour are specified, although a period of three years was permitted for a gradual adjustment to these levels. Some attention was ordered paid to variations in living costs as well as to collective agreements between labor and management. The administrator is given discretion in determining the exact application within the general limits prescribed by law. An appeal to the federal courts may be resorted to in those cases

Provisions
of the
Wages and
Hours Act
of 1938

¹ The Supreme Court announced its decision upholding the new act in 1941. See *United States v. F. W. Darby Lumber Co.*, 85 L. Ed. 395, in which Justice Stone, speaking for the majority, specifically overruled *Hammer v. Dagenhart*, 247 U. S. 251 (1918), and by implication overruled other cases which had removed manufacturing and so forth from interstate commerce.

² These were excluded because they were already provided for by other federal legislation.

³ Exceptions are made where work does not interfere with education, health, or general welfare. In manufacturing and mining, however, exceptions are not permitted.

⁴ Forty hours per week is merely the standard, not the maximum. For labor beyond forty hours time-and-a-half pay must be given, while on Sundays and holidays double pay is specified.

where the decisions of the administrator are deemed in excess of legal authority.

It is too early to judge the full importance of the Wages and Hours Act, but it is already apparent that the effects are far-reaching. The **Operation of the Act** more than fifteen and a half million persons now under the wages and hours prescribed may be augmented by additional millions if proposed extensions are adopted. The opposition of some employers, including the southern cotton-mill owners, has been vigorous, but apparently without avail. In view of the need for maximum production during the war numerous efforts have been made to have the act suspended for the duration, but up to March, 1942 they were not successful.

THE NATIONAL LABOR RELATIONS BOARD

After the Supreme Court threw out N.I.R.A. with its guarantee of collective bargaining,¹ pressure on the part of labor for some other legislation which would protect its interests became tremendous. Almost at once the President sent to Congress a bill which provided for the creation of a National Labor Relations Board. Senator Wagner of New York had much to do with the drafting and sponsored not only the original bill but certain amendments which were intended to correct defects; consequently it was quite appropriate that the bill should bear his name. The act specifically excludes the employees of the national, state, and local government and railroad workers covered by the Railway Labor Act of 1926. Its general purpose was stated to be encouraging collective bargaining and "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. . . ." Based on the power of Congress to regulate interstate commerce, the act was upheld by the Supreme Court² even before Mr. Roosevelt had had an opportunity to reform its bench through the use of his appointing power.

A National Labor Relations Board of three members is provided by the Wagner Act to carry out its purposes. One of these serves as chairman and all are appointed by the President with the consent of the Senate for five-year terms. This board has diverse responsibilities which

¹ See *Schechter Poultry Corporation v. United States*, 295 U. S. 495 (1935).

² See *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937).

have occasioned some confusion as well as considerable public criticism. It has general supervision of the work of the reasonably large staff of investigators, clerks, examiners, lawyers, and other employees maintained to administer the act. It decides which cases to press and has at least something to say about the preparation of the charges against an employer charged with unfair labor practices. It then proceeds to sit as a quasi-judicial body in hearing the charges and the defense and finally decides whether the charges have been sustained. In cases of appeals the board has the last word in deciding what arguments shall be presented to the federal courts.

**General
Character
of the
National
Labor
Relations
Board**

The National Labor Relations Board has two general functions to perform. In the first place, it is expected to determine the bona fide representatives of employees for purposes of collective bargaining when there is some dispute over which union has the right to speak. In the second place, it receives, investigates, and hears complaints which have been based on an alleged violation of the terms of the Wagner Act.

**Functions
of
N.L.R.B.**

The magnitude of the first function has been increased not only by the C.I.O.-A.F.L. split but also by certain provisions of the Wagner Act itself. Previously many corporations had had company unions which perforce included all employees and ordinarily could be easily controlled by the company officials. The Wagner Act outlawed these company-dominated unions and provided that the employees should set up their own organizations. A majority of the employees in any one company could determine the exact form of that organization which, when completed, could speak for all of the employees, even for those minority groups which had opposed the majority action. Inasmuch as two or three sets of leaders or two national labor unions might claim to have the support of the majority of the workers, some method had to be specified for settling the matter. The National Labor Relations Board was assigned this duty which it performs by sending one of its staff of field agents to hold company elections at which the employees concerned vote for the particular representatives whom they desire.

**Adminis-
trative
Responsi-
bilities**

The more difficult second function is that of deciding whether an employer has been guilty of unfair labor practices or whether employees have taken undue advantage of the Wagner Act. Until 1940 the N.L.R.B. restricted itself to hearing complaints raised by the employ-

ees, but after much criticism it extended this privilege to employers also.¹ When these complaints are filed with the board—and large numbers arise annually—it is the practice to send investigators out to check on them. If these agents find that there seems to be some substance to the complaints, examiners are then detailed to visit the place where the complaint originated in order to hear evidence the employee organization has gathered, as well as to seek additional evidence and hear the rebuttal that the employer may wish to make. These hearings may last a few hours or stretch over several days. When they are over, the examiner carries his findings to Washington. Here they are reviewed and if they seem adequate are made the basis for an order or for a hearing by the board itself. If the board is satisfied that a violation of the act has occurred, it issues a cease-and-desist order, which may or may not be accepted by the employer. In case the employer refuses to obey the order, the case is carried to the federal courts for final settlement. Several of the most important cases have gotten as far as the Supreme Court itself.²

Few government agencies have stirred up more public interest than the National Labor Relations Board. On the positive side, it has been asserted that the board has brought the treatment of labor to a level far beyond any reached in the past. Moreover, the legal section of the board has been so competent that it has won almost all of the cases which have been appealed to the courts, even to the Supreme Court. Indeed its record is so superior that it is almost the only legal section which the Solicitor General's office has permitted to present its own cases before the Supreme Court.³ Adverse criticism has been so bitter and so varied that it is difficult to present a résumé here. Employers have accused the N.L.R.B. of almost every crime under the sun. Both the A.F.L. and the C.I.O. have hurled their barbs, in each case maintaining that the board has unduly favored the other. The newspapers have depicted the board as very evil. The tide reached such a high stage that the House of Representa-

¹ When President Roosevelt finally failed to reappoint Mr. Madden to the board, control shifted to a more moderate element which adopted this reform. The Wagner Act does not specifically say that employers shall not be permitted to bring complaints, but the board had ruled that only employees were entitled to redress. Thus the revision required only a ruling from the board rather than an amendment to the act.

² The Jones & Laughlin case was the first of a long line which involved among others the Ford Motor Company and the Republic Steel Corporation.

³ This statement was made by then Solicitor General Biddle to the Institute of Government held in Washington in April, 1940. Its head was appointed Solicitor General in 1941.

tives appointed the Smith Committee to investigate the N.L.R.B. The lengthy hearings of this committee were reported in great detail in the press, particularly when evidence portraying the shortcomings was presented. Out of the welter of testimony it came to light that the board had employed numerous young lawyers recently graduated from eastern law schools whom it was alleged had had little practical experience. Moreover, certain staff members were accused of playing politics within the board itself.¹ Perhaps the most damaging charge lodged against the board was that it openly flaunted its sympathy for labor, despite various quasi-judicial functions which it was charged to perform. Statements, letters, and other evidence purported to show that the staff of the board and indeed the members themselves had the prosecuting as opposed to the judicial attitude of mind and totally lacked judicial propriety; they were said to be contemptuous of employers and determined to find for labor even before a case had been heard or was introduced. After considering the testimony and evidence, the Smith Committee decided to recommend changes in the Wagner Act. However, neither these nor the recommendations of the American Federation of Labor were heeded by Congress, since the President indicated his reluctance to have such revisions made.

After considerable delay President Roosevelt finally decided after the election of 1940 not to reappoint Mr. Madden to the National Labor Relations Board and kicked him upstairs to a seat on the federal circuit bench. At the same time the President announced the appointment of a moderate to the vacancy, which had the effect of shifting the control from the Madden-Smith combination.² The office manager who had been under severe criticism resigned along with several other key staff members; a ruling was issued which permitted employers as well as employees to avail themselves of the assistance of the board. The result has been that a more prudent course has been followed during recent months and the N.L.R.B. has been out of the limelight for the first time in its existence. To what extent the national emergency has entered into this shift is not entirely clear, but there seems reason to believe that the new board will be permanently attracted to a middle-of-the-road position.

Reorganization
of
the Board
Personnel

¹ The office manager was especially charged with this activity.

² In 1941 the appointment of Mr. Smith was not renewed and N.L.R.B. operated with an entirely new personnel.

OTHER LABOR AGENCIES

As far back as 1913 a United States Board of Mediation and Conciliation was created to mediate in complicated disputes arising between labor and management. In 1920 a Railroad Labor Board was created to perform that function in railroad labor disputes. Six years later Congress authorized a United States Board of Mediation which was succeeded by a National Mediation Board in 1934. This board, consisting of three members appointed by the President with the consent of the Senate, operates more or less behind the scenes, handling cases which rarely make the newspaper headlines.¹

The Railway Labor Act of 1926 provided for the arbitration of disputes between the railroads and their employees. Amendments added to this act in 1934 created a National Railroad Adjustment Board² which is organized into four more or less autonomous divisions. Three of these have ten members each and the fourth consists of six members, in every case drawn equally from the employers and employees. The divisions have offices in Chicago, dispose of large numbers of routine disputes relating to wages, hours, and related matters, and report annually to the National Mediation Board. More than three thousand collective agreements are supervised by the divisions of the Adjustment Board.

In 1940 a National Defense Mediation Board, composed of eleven members and thirty alternates, representing the general public, employers, and employees was appointed by the President. Charged with giving its attention to those disputes referred to it by the Department of Labor, this board found itself confronted with almost insuperable difficulties during the labor troubles arising out of the national defense program. It spent much time and energy trying to bring the management and employees together in the Allis-Chalmers strike, in the North American Aviation tie-up, the captive coal mine case, and many other less publicized disagreements. Although it ordinarily commanded the general support of the President and of the Department of Labor, the National Defense Mediation Board possessed no authority beyond using its good offices

¹ The *Seventh Annual Report* (1941) of this board stated that it had had only one small railroad strike involving seventy-five employees during 1941.

² For a good article on this board, see L. K. Garrison, "The National Railroad Adjustment Board," *Yale Law Journal*, Vol. XLVI, pp. 567-598, February, 1937.

in bringing about a compromise between the claims of labor and management. With the representatives of labor insisting upon allegedly unreasonable concessions, it found it hard to accomplish anything even when the employers were willing to meet labor halfway.¹ Its record became such that it lost the confidence of the public and was supplanted early in 1942 by a War Labor Board.

Until early in 1940 labor disputes had for some months reached an all-time low for the present century. Then the newspapers reported one important strike after another and the national defense program was slowed down materially, despite the fact that the national government took over several plants to permit the resumption of work.² Earlier proposals looking toward compulsory settlement of labor disputes were revived and new ones originated. Public opinion apparently swung to some method of compulsory control,³ but President Roosevelt declared himself opposed to restricting the freedom of labor to strike, while labor leaders vociferously maintained their right to strike whenever it suited their fancy, even during a grave national emergency.⁴ In support of compulsory settlement legislation it was pointed out that labor had behaved irresponsibly and had placed the whole United States in jeopardy. Against compulsory settlement were such factors as failure to agree on the means to effect compulsory agreements, the retrogression that any such control would threaten to the labor cause and its hard-earned victories, and the trend toward totalitarianism that would necessarily accompany regimentation of labor. Representatives of labor and capital finally agreed in December, 1941, to ban all strikes for the duration of the war, submitting disputes to arbitration. However, this agreement did not necessarily bind local labor unions⁵

Compulsory Settlement of Labor Disputes

¹ During the fifteen months preceding October 1, 1941, a total of 24,284,981 man-days of labor were lost on account of strikes—enough, it was estimated, to build 10,000 planes. Altogether 1,960,331 workers were involved in these strikes. There were 1,593 strikes during January 1–May 31, 1941.

² The Army occupied the North American Aviation Plant and the Navy took over a shipbuilding yard in New Jersey in 1941, but in both cases the property was shortly returned to private owners.

³ At least the Gallup poll reported such sentiment.

⁴ Not all labor leaders, of course, went this far. . .

⁵ In January, 1942, according to the National Association of Manufacturers there were 43 strikes involving a loss of 661,976 man-hours. In February, 1942, there were 77 strikes involving 70,905 persons and a loss of 2,028,824 man-hours. The Gallup Poll reported 90 per cent of the American people favoring antistrike legislation. However, in March, 1942, President Roosevelt declared our strike situation superior to any country with the exception of Germany where labor dared not strike.

and hence Congress continued consideration of antistrike legislation.

Early in 1942 the President issued an executive order which provided for the setting up of a National War Labor Board in the Office for

**The
National
War Labor
Board** Emergency Management to carry out the agreement between national labor leaders and captains of industry referred to above. This board has twelve special commissioners appointed by the President as follows: four to represent

the public, four from the ranks of labor, and four from industry.¹ The staff of the National Defense Mediation Board together with all records, property, and unexpended funds of that agency were transferred by the executive order to the new board. In establishing the National War Labor Board the President specified that a settlement of labor disputes should first of all be sought through direct negotiations or procedures provided in collective-bargaining agreements. If this attempt fails, then recourse is to be had to the Conciliation Service of the Department of Labor. If the disagreement cannot be settled promptly by that service the Secretary of Labor is instructed to certify the case to the National War Labor Board, though, after consultation with the Secretary of Labor, the board may at its own discretion take jurisdiction. The board is authorized to "determine the dispute" and may use mediation, voluntary arbitration, or arbitration under rules which it drafts. Umpires and arbitrators to handle specific cases are to be drawn from a panel of leading citizens.²

**Labor and
the Courts** Because federal courts have jurisdiction over cases involving interstate commerce and diverse citizenship, they receive a number of labor disputes even though no federal law may be concerned. Toward the end of the last century the courts began to use the technique of the injunction as an instrument to outlaw strikes and boycotts, to force strikers back to work, and to punish labor leaders for disobedience by a prison sentence for contempt of court. These methods, of course, aroused the indignation and anger of the rank and file of labor and subsequent labor lobbying and pressure resulted in the inclusion in the Clayton Antitrust Act of 1914 of several protective provisions. Labor unions and agricultural organizations were exempted from the operation of antitrust legislation. Injunctions

¹ Later the President named 24 associate members to serve as alternates when the full members were unable to sit.

² As an additional means of keeping labor in good humor the President shortly after the declaration of war established an informal committee of representatives of A.F. of L. and C.I.O. to meet with him periodically to discuss labor's participation in the war.

were prohibited in industrial disputes, except to prevent irreparable injury to property or property rights, and were in no case permitted to abridge the right to strike. Finally, the law provided for trial by jury in certain contempt cases. These safeguards, however, proved inadequate. During the 1920's, because of a too liberal interpretation of the clause permitting its issuance to prevent irreparable injury to property rights, the injunction became an even more effective weapon to stop strikes. Again in response to the demands of labor, Congress passed the Norris-LaGuardia Anti-Injunction Act in 1932. The declared purpose of the act is to limit the jurisdiction of federal courts so that the worker "shall be free from interference . . . of the employers of labor . . . in the designation of representatives . . . or in other concerted activities for the purpose of collective bargaining. . . ." It forbids any injunctions against striking, publicizing strikes, peaceable assembly, or joining a labor union. Further, it provides that when an injunction is absolutely necessary to protect property, the order can apply only to the specific act complained of and not to the strike as a whole. By this latter provision the loophole of the Clayton Act was effectively plugged. Among other things the act throws safeguards around those charged with contempt of court in labor disputes and outlaws "yellow-dog" contracts.¹

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¹ A "yellow-dog" contract is a promise extracted from an employee by an employer as a condition to be met previous to employment which provides that the employee shall not join a union, shall resign from the union if he is already a member, or shall resign from employment if he prefers to join a union. Such contracts had previously been outlawed by both state and national law but the Supreme Court had refused to uphold the laws in *Adair v. United States*, 208 U. S. 161 (1908), and *Coppage v. Kansas*, 236 U. S. 1 (1915). Since the Court is far more liberal now than then, the Norris-LaGuardia Act has not been questioned.

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CHAPTER XXXI

SOCIAL SECURITY

ALTHOUGH the United States has led the world in such fields as road building and agricultural programs, it has until recently been notoriously indifferent to problems of social security. That is not to say that there has been no discussion of old-age pensions, unemployment insurance, and child welfare on the part of individuals and groups. Indeed for many years there has been a keen interest in certain quarters in the German and English measures along these lines, as well as advocacy of reasonable activity in the United States. But decade after decade went by without appreciable accomplishment. Severe economic depressions threw millions out of work and led to untold suffering; yet beyond local soup kitchens and other such dribbles little or nothing was done toward setting up any public program of assistance.¹ It was not until the economic breakdown following 1929 deprived twelve million or so persons of their employment, and the state and local governments exhausted their resources, that the Federal government took cognizance of the situation and began to grant money for direct relief.

Federal assistance aggregating several billions of dollars ² in 1933 and 1934 served a very useful purpose—some people are of the opinion that it may have staved off a civil revolution. But it was an emergency sort of activity rather than a permanent program. Nevertheless, the events of the early 1930's did convince many persons, including those in authority in the national government, that the time had arrived when the United States could no longer afford to remain oblivious to its responsibilities for general social security.

Emer-
gency
Efforts:
1933-1934

The result of this realization was far-reaching; it led to the enact-

¹ The public efforts which were made prior to 1920 are discussed by Leah Feder in her *Unemployment Relief in Periods of Depression*, Russell Sage Foundation, New York, 1936.

² The exact amount is difficult to state. However, during three years Congress appropriated about \$8,500,000,000 for the Federal Emergency Relief Administration, the Public Works Administration, the Civil Works Administration, the Works Progress Administration, the Civilian Conservation Corps, and related agencies.

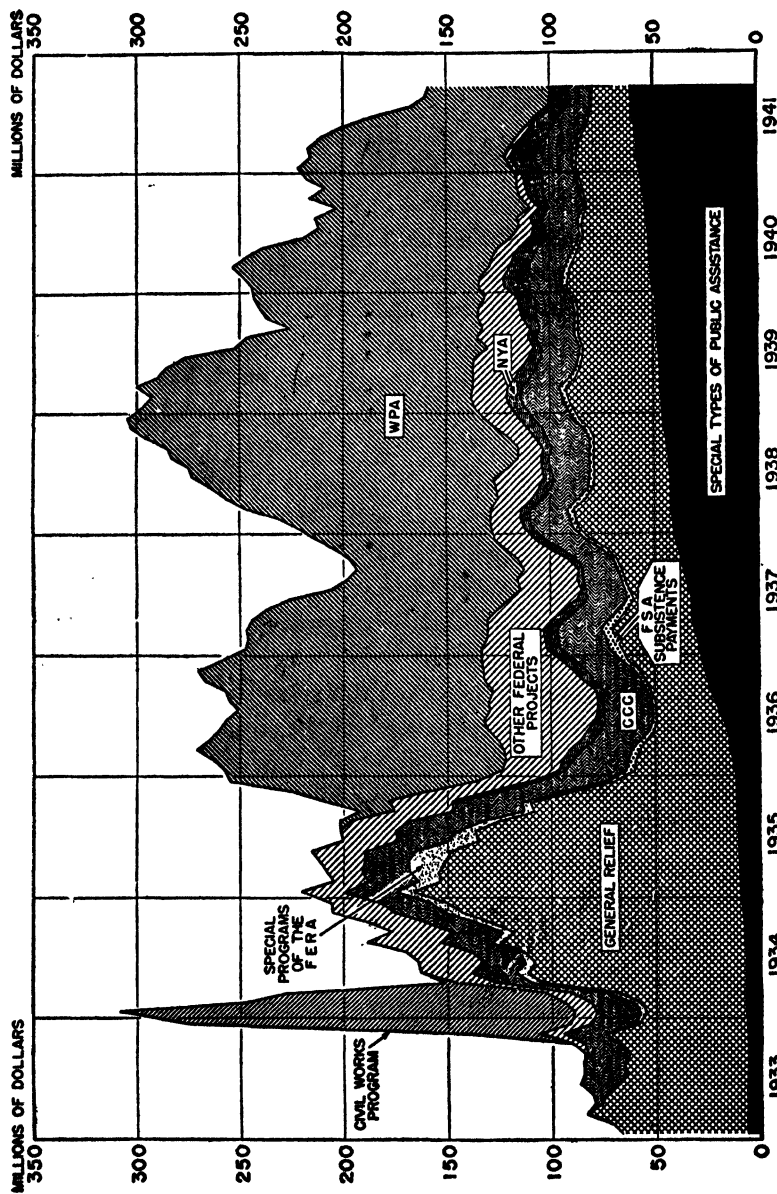


Fig. 10. Public assistance and federal work programs: payments in the Continental United States, January, 1933–September, 1941. Reproduced from the *Social Security Bulletin*.

ment of the well-known Social Security Act of 1935.¹ Three general problems received attention in this omnibus statute: old-age dependence, unemployment, and child welfare. The remainder of this chapter will be largely devoted to the programs which have been set up under this act and its subsequent amendments. At this point it may be added that the accomplishments of the comparatively brief period since 1935 have been notable. The United States may have been slow to start a program in this field, but once committed to the enterprise it has displayed distinct vigor in pushing toward goals that other countries have required decades to reach.

Social
Security
Act of 1935

OLD-AGE SECURITY

The problem of old age has long been a pressing one; for centuries human beings have lived beyond their periods of self-support. In primitive social organizations the group sometimes assumes responsibility for the support of those who are too old to be productive, but in many instances the aged have been left to starve. Modern society has not condemned all the aged to a status of dependence, for the institution of private property has permitted large numbers of people to save enough during their active years to maintain themselves in old age. Nevertheless, even in the United States where insurance companies have written more policies than in the remainder of the world put together and the institution of private property has been jealously guarded, many persons are dependent after the age of sixty-five years. This does not mean that they are necessarily dependent upon charity or public assistance, for large numbers are, of course, cared for by their children and relatives. Nevertheless, the plight of a large proportion of the aged has been until recently very unhappy, to say the least. Even when children do assist, support has often not been given cheerfully or in anything like adequate amount. The stringencies of the years following 1929 made it increasingly difficult for young people to earn enough for themselves, let alone their aged dependents. Moreover, the savings which many people had counted on to relieve their declining years were swept away in the bank failures, the stock market crash, and the wave of bankruptcies.

¹ An excellent discussion of this act and its provisions will be found in *Social Security in America*, published for the Committee on Economic Security by the Social Security Board, Government Printing Office, Washington, 1937.

Even before 1929 a number of states, beginning with Montana in 1923,¹ had set up old-age pension systems; by 1935 some twenty-nine states had such provisions. With rare exceptions it may be added that these state pension systems did not have sufficient resources to permit the payment of pensions that were even reasonably adequate.² The fact that a majority of the states already had pension systems was important in arriving at a decision about what provisions should be made by the Federal government, for certain vested interests were loath to see the state plans shelved in favor of a single national system. In passing the Social Security Act of 1935 it was, therefore, decided to enlarge the state efforts by federal grants-in-aid and at the same time to set up a new national scheme of old-age and survivors insurance which would eventually supplant the need for widespread public assistance to the aged.

By September, 1938, all of the states had passed the necessary legislation to enable them to participate in the federal grant-in-aid program of old-age assistance.³ Inasmuch as the national government does not require that all of the states have exactly the same plan, there are forty-eight different systems, each of which serves as a separate financial unit. However, each state must meet certain general standards which the Federal government has drawn up. Pensions can be granted only to those persons who are sixty-five years of age or over and who after investigation are shown to have insufficient means to support themselves. In other words, contrary to a rather widespread popular impression, old-age pensions are not paid to all aged people, but only to those who cannot support themselves directly or through the aid of children. As a matter of fact approximately one-fourth of those persons sixty-five years or over actually receive assistance, although the proportion varies widely from state to state, running below 10 per cent in New Hampshire and exceeding 50 per cent in Oklahoma. The Federal government con-

¹ Arizona attempted aid to the aged as early as 1914, but its law was declared invalid on the grounds of vagueness.

² During 1928 only some 1,500 persons throughout the United States received old-age assistance, but this increased to 400,000 by 1935. In only five of the states were average monthly pensions above \$20 in 1935—in fourteen states the average monthly payment was less than \$10 before the Social Security Act became operative.

³ There are actually fifty-one old-age assistance systems in operation, for Alaska, Hawaii, and the District of Columbia supplement the forty-eight states.

tributes half of the amount which is granted,¹ but in no case will the federal share exceed \$20 per month.

Another common supposition is that all recipients of old-age assistance within a single state receive the same monthly grant. For example, if a state is permitted by law to pay \$30 or \$40 per month, it is frequently assumed that all who benefit receive that amount. Actually the amount given is dependent upon the needs of the person and the \$30 or \$40 is merely the maximum that anyone can receive. So one person may be given \$15 per month, another \$25 per month, and still another \$40 per month—all in the same state. States vary widely in the extent to which they grant the maximum amount, with some states rarely awarding it unless expensive medical care is required. The average monthly grant in the fifty-one systems slightly exceeds \$20 per month,² but the individual states range from Arkansas, Alabama, Georgia, Kentucky, Mississippi, and South Carolina with an average of under \$10 to a few states at the top, including California, Arizona, Colorado, and Washington, which exceed \$30.³

It should be stressed that old-age assistance, or pensions, to use the common designation,⁴ depends entirely upon public funds for support—recipients make no contributions. Consequently the granting of this assistance is interpreted as a favor rather than as a matter of contractual right. Inasmuch as only those who have virtually no resources⁵ are given the assistance, it is largely a charitable contribution. The states maintain staffs of investigators who interview the applicants, talk to their relatives and neighbors, and otherwise seek to determine how much they are in need of assistance. Political considerations are not supposed to enter at all

Variation
in Amounts
Paid

Noncon-
tributory
Character
of Old-age
Assistance

¹ The maximum was originally \$30, but in 1940 Congress raised the amount to \$40.

² It was \$20.95 in September, 1941. See *Social Security Bulletin*, Vol. IV, p. 27, November, 1941.

³ In September, 1941, Arkansas paid the lowest average: \$7.63 per month, while California, with \$36.45 per month, had the highest average. See *Social Security Bulletin*, Vol. IV, p. 38, November, 1941.

⁴ Social security experts do not approve of the term "pensions" because it implies characteristics which are not associated with these grants. They use the term "public assistance" to refer to this type of benefit and "annuity" to refer to the payments which are made as a matter of contractual right on the basis of payments made beforehand.

⁵ The amount of property which recipients are permitted to have varies from state to state. A limited amount of personal property is always permitted and home ownership may or may not be allowed. Where homes are owned, it is usually required that they be turned over to the state after death and that the state have the right to the proceeds from sale up to the amount which has been given in public assistance.

into the decisions and the federal requirements specifically ban that factor. Nevertheless, there are fairly insistent allegations in some of the states that supporters of the party in power receive distinctly more attention when they apply and more generous pensions thereafter than those known to have affiliations with the minority party. The Social Security Board investigates the worst instances of abuse and in extreme cases cuts off federal funds.¹

It can scarcely be questioned that the lives of the million or so aged people who currently receive old-age assistance are made easier by these grants. The recipients may not live on the fat of the land, but at least they do not starve as the aged once did. Allowed to live in their own homes or rooms, they retain a pride which was rarely possible under the older system of enforced residence at the county poor house. Moreover, the psychological boon must be very great, for the plight was sad of those old people who had to surrender almost every vestige of independence and pride as the hangers-on of mean-spirited relatives. On the other hand, the drain on the federal as well as on the state and local ² purses is heavy, especially in those states that pay the highest rates. Inasmuch as the number of persons over sixty-five years of age is steadily increasing in the United States, the cost of a noncontributory system is bound to soar. For example, in 1870 only three Americans out of one hundred were sixty-five years of age or over; by 1940 that proportion had doubled; and it is estimated by the population experts that toward the end of the century as many as a dozen out of a hundred may fall within that age group.³ Then, too, a system based on charity does not meet the need of large numbers of borderline cases. They can scarcely qualify for public assistance, even if they would be willing to swallow their pride and apply; yet they do not have enough to live with reasonable comfort. To meet this situation it was decided to supplement the old-age assistance systems of the states with a nation-wide old-age annuity plan.

In contrast to old-age assistance, old-age and survivors insurance is

¹ The best case of drastic penalty was that of Ohio in 1939. Even in that case federal payments were not withheld beyond a month.

² States vary in caring for the 50 per cent that they must pay. Twenty-one require local governments to shoulder some of the burden—an average of about 10 per cent.

³ For an interesting article on this subject, see C. A. Kulp, "Appraisal of American Provisions for Old-Age Security," *Annals of the American Academy of Political and Social Science*, Vol. CCII, pp. 66-73, March, 1939.

handled directly by the national government under terms laid down in the Social Security Act of 1935 and its amendments. With the exception of those who are employed in agriculture, government service, domestic labor, and educational institutions,¹ employees of every sort were included in 1941 to the number of more than forty million and approximately four hundred thousand were actually drawing benefit payments.² During working years these employees and their employers are required to pay a regular proportion of wages or salaries into the federal Treasury for the purpose of building up a fund out of which annuities can be paid upon retirement. Those who are covered by the plan may begin to draw annuities, based on the contributions which they and their employers have made, at the age of sixty-five years. The amount which they receive is in general determined by what they have paid in, although the earlier recipients will receive considerably more than that. The maximum monthly payment is \$85, though it is not anticipated that any large proportion will be able to build up reserves sufficient to pay that amount.³

Old-age
and
Survivors
Insurance

The original act of 1935 provided that both employees and employers should start out by paying 1 per cent of the wages or salaries into the federal Treasury.⁴ This was to be increased to 1½ per cent for each on January 1, 1940, to 2 per cent in each case in 1943; to 2½ per cent in 1946, and to a top of 3 per cent in 1949. However, considerable apprehension developed as the money began to flow into the federal Treasury and the early benefits paid were small. Many authorities argued that it was dangerous to build up a tremendous fund for paying claims that would not reach their full proportions for two or three decades. Moreover, the practice of using the money paid in to meet the large recurring federal deficits was condemned on the ground that it was unfair to future generations who would have to pay to replace the money taken out as well as con-

The
Problem of
Rates

¹ Government employees, of course, have their own pension system. Recommendations have been made which would place domestic labor and educational institutions, and so forth, under the system, adding approximately twenty-seven million persons. The President, the Treasury, and Federal Security Agency have recommended this extension.

² As of September 30, 1941, 429,607 cases had been approved for benefit payments, though only 384,095 received unconditional payments.

³ To qualify for \$85 one would have to have received an average monthly wage of \$250 over a period of forty-five years. The average monthly payment in September, 1941, was \$18.22. See *Social Security Bulletin*, Vol. IV, p. 64, November, 1941.

⁴ It should be noted that these figures are for each of the two parties, not the combined rate. Hence the total tax was to start at 2 per cent and to reach 6 per cent in 1949.

tribute to their own annuities. Finally, it was claimed that removing so much money from circulation was responsible for the recession in 1938. Largely as a result of these criticisms, Congress decided as 1940 drew near to keep the tax at 1 per cent instead of raising it to $1\frac{1}{2}$ per cent in accordance with the original provision. In the fiscal year ending June 30, 1941, \$690,000,000 was paid in on this account, which was much more than enough to care for current annuities.¹ With inflation confronting the country in 1941 as a result of the national defense program, Secretary of the Treasury Morgenthau recommended that the old-age benefit tax be increased to at least 2 per cent and possibly to 3 per cent as a means of taking money out of circulation.² President Roosevelt recommended a \$2,000,000,000 increase in social security taxes in his budgetary message of 1942, leaving the details for later consideration.

On the whole, there has been general approval of the old-age insurance system. Both employer and employee may object to the burden of the payments to the Treasury; but since the amounts are collected at least every month, they are not large at any one time. The experience of Great Britain has indicated that the cost of an at all adequate noncontributory pension scheme is so high that it is a heavy if not intolerable burden.³ Hence realistic persons admit that, much as they begrudge current levies, they are essential to a permanent system of old-age benefits. There are, of course, still some "rugged individualists" who believe that private initiative should provide for old age, but the experiences of the last two decades have gone far to convince the great majority of people either that individuals do not have the foresight and wisdom to make adequate preparations, or that the economic system is so unstabilized and so cyclical that hard-earned savings cannot be depended upon. Nevertheless, there are numerous criticisms aimed at the details which now characterize the plan.

Building up a large reserve has already been mentioned and needs no notice here, beyond reiterating that many competent authorities favor a pay-as-you-go method. Although a noncontributory scheme is not regarded as sound, many people argue that the government

¹ Report of the Treasury Department as quoted by the *New York Times*, August 15, 1941.

² See the *New York Times*, August 15, 1941, for Mr. Morgenthau's exact words.

³ After fourteen years of experience England in 1925 started a contributory old-age insurance system to supplement its older noncontributory plan.

should shoulder some of the cost. If the 1 per cent rates in effect up to 1942 are continued, it will be necessary for the public treasury to assume a share of the cost.¹ Exemptions of farm labor, domestics, and employees of educational, charitable, and religious organizations from the system have been severely criticized and the Social Security Board and Treasury Department favor bringing all of these classes under the act.

**Criticisms
Directed at
the Old-
age Insur-
ance
System**

The maximum of \$85 per month seems to some people too low. On the other hand, the annuities to those who have paid in little or nothing but who reach the age of sixty-five shortly after the system starts operating are held to be unduly high. The original act did not distinguish between single and married people, but an amendment in 1940 reduced the annuities for the former to some extent. The plan started out without providing for wives', widows', and orphans' benefits and this seemed a serious weakness to many of the participants. Amendments in 1940 remedied this omission by providing that a wife past sixty-five receives half as much as her husband and if she survives him three-fourths of his annuity. If an insured bachelor dies before reaching the age of sixty-five and leaves no dependents, the death benefit is small, but the case of a person with the same compensation leaving a wife and one or more dependent children would be dealt with much more generously. For example, if a mechanic, steadily employed at \$100 per month for four years, dies at the age of thirty and leaves a wife and three children, the latter can depend upon the government to pay \$51.50 per month until the oldest child is sixteen years old (eighteen if in school), \$32.19 until the youngest child attains the above age, nothing after that time until the widow reaches sixty-five, and then a resumption until her death.²

UNEMPLOYMENT SECURITY

Old-age assistance goes far to meet human dependence, but it does not care for cases in which the breadwinner is thrown out of his job because of an economic depression. The wholesale layoffs and dismissals following the crash of 1929 attained proportions that probably no

¹ It is estimated that about one-third of the cost will have to be borne by the government if such rates remain in effect.

² If a widow remarries, her benefit ceases at once. This example is one of several cited in the report of the Committee on Insurance and Annuities of the Association of American Colleges in the *Bulletin of the American Association of University Professors*, Vol. XXVII, pp. 354-355, June, 1941.

other country in the world has equaled. Estimates vary as to how many persons were unemployed at the depth of the depression, but competent observers estimate that there must have been from twelve to fifteen million.¹ Some of these did not want employment too badly and many were on the border line of unemployables, but the great majority, through no fault of their own, found themselves without an income to pay for food, rent, and clothing. Few of them had sufficient reserves to carry them for more than a year, while many were in dire straits within a few weeks. The state and local governments attempted to handle the problem and, when they found the demands too heavy for their resources, the national government came to their rescue. Even in spite of the billions spent, a great amount of hardship occurred. To obviate at least a part of this suffering in the future, it was argued that a system of unemployment insurance should be set up. So in passing the Social Security Act of 1935, Congress included a number of provisions looking toward that end.

Instead of establishing a national system of unemployment insurance it was decided by Congress to entrust this matter to the states,² but a federal pay-roll tax of 3 per cent with a 90 per cent offset to those states maintaining approved unemployment compensation plans virtually forced all of the states to do as Congress wished. At present there are fifty-one unemployment systems since all of the states plus Alaska, Hawaii, and the District of Columbia are engaged in this activity.³ With so many different plans, it might be supposed that there would be little similarity in various parts of the country, but actually the basic principles are reasonably uniform everywhere.⁴ All of the systems are financed by a pay-roll tax on employers; only six require any contributions by employees;⁵ and all but three impose a tax of 2.7 per cent. In all except

**Unem-
ployment
Compensation**

¹ In December, 1941, unemployment had been reduced to 3,800,000 and there were 49,500,000 persons employed according to W.P.A. See *New York Times*, January 10, 1942.

² However, in the years 1941-1942 there was some discussion of bringing unemployment compensation entirely under the Federal government in order to make payments more uniform, distribute the burden, etc. President Roosevelt favored such a course, but the majority of states were opposed.

³ Illinois and Montana did not start their payments until July, 1939.

⁴ For a convenient source of detailed information, see William J. Haber and J. J. Joseph, "Unemployment Compensation," *Annals of the American Academy of Political and Social Science*, Vol. CCII, pp. 22-35, March, 1939.

⁵ There is considerable opposition to employee assessments among the ranks of organized labor. Hence there is a trend in the direction of abolishing such requirements in those states where they still exist. Ten states originally specified employee contributions.

two cases the weekly maximum benefit payment is \$15, while in a majority of states a weekly minimum of \$5 is specified. There is some variation in the number of employees required to bring a business under the system, but most of the states place the number at eight. The duration of benefits is limited to fourteen or sixteen weeks, with the proviso that not more than a given percentage of previous earnings will be paid out in aggregate. Ordinarily workers are required to have been employed ten weeks before they can qualify and after they are laid off they must wait from one to three weeks before beginning to draw benefits. The average weekly benefit actually paid is somewhat more than \$10, with Mississippi at the lowest end with \$6 and Michigan at the top with about \$14. Approximately thirty million employees are now under the fifty-one plans, although government officials, domestic labor, agricultural workers, and educational, religious, and charitable employees are not covered.¹

It is still early to evaluate the worth of unemployment compensation. Several states were slow in getting started; political appointees were given charge of the administration of some of the systems;² and various amendments have been made in order to modify requirements. It should be noted first of all that unemployment compensation in the United States does not offer more than temporary assistance, for it rarely covers more than sixteen weeks of payments. Employers sometimes cannot see that they should shoulder the entire cost of the insurance. How adequate the funds will be to meet claims if another catastrophic depression descends upon us is a question which only time can answer. It is evident that the present plans are ameliorative rather than permanent, but they would seem to serve a useful purpose as far as they go.³

An Evaluation of Unemployment Compensation

In some countries the government requires employers to pay employees whom they are no longer able to use a dismissal allowance of

¹ The average number of recipients of unemployment insurance benefits in September, 1941 was 493,000, or 382,000 fewer than a year earlier. Total payments during the first nine months of 1941 were about \$275,000,000, or 35.6 per cent less than the corresponding period in 1940. See *Social Security Bulletin*, Vol. IV, pp. 55-57, November, 1941.

² See Walter Matscheck, "Administering Unemployment Compensation," *ibid.*, p. 149. "Perhaps every observer of unemployment compensation administration in the states will agree that personnel failures were the greatest single cause of confusion and delay. Too frequently employees were selected by purely political standards."

³ On the other hand, some observers think that the Unemployment Trust Fund surplus of \$2,283,000,000, as of June 30, 1941, "is ample to meet any conceivable demands upon it in the future" and that hence the tax should be decreased. See statement of Representative Celler, *New York Times*, August 19, 1941.

the equivalent of several months' wages.¹ The Japanese have maintained that protection for some years and it is a considerable aid to those who are forced to find new jobs for themselves. It may be added that even in the case of bankrupt businesses the claim of the employees to their dismissal pay has prior standing over other creditors. The United States has not proceeded in this direction as yet, although Secretary Morgenthau in the summer of 1941 declared: "I think that we should move in the direction of what some people call a 'separation wage,'" adding that the fund to provide this should be set up by joint contributions from employers and employees.² Unemployment compensation offers some means of tiding over to those who are temporarily laid off but not discharged; a dismissal wage would give at least some protection to those who are dismissed. With the slack which must sometime come after the armament preparations have been completed, a dismissal wage should serve a very useful purpose in this country.

In order to integrate its efforts with the unemployment compensation program, President Roosevelt transferred the United States Employment Service from the Department of Labor to the Federal Security Agency.³ Prior to 1942 each state had its own local employment service, but these were taken over by the national government on January 1, 1942. Unemployed persons may register at some 4,500 offices scattered over the country—if they receive unemployment compensation they are compelled to register. Twelve regional offices coordinate the work of the local offices, sending out information in regard to opportunities and otherwise serving as a clearinghouse. Even before the demand for munition workers became an excellent source of employment, the reports of the United States Employment Service indicate that a good deal was done to assist unemployed persons in securing positions.⁴

In order to furnish a substitute for nonexistent private employ-

¹ Japan and several Latin-American countries may be cited as examples.

² See the *New York Times*, August 15, 1941.

³ For a detailed study of the employment offices administered by the federal and state governments, see R. C. Atkinson, Ben Deming, and Louise Odencrantz, *Public Employment Service in the United States*, Public Administration Service, Chicago, 1939.

⁴ During the first nine months of 1941, 4,052,234 persons were aided in securing jobs against 3,800,000 during all of 1940. The active file of registrants on September 30, 1941, was 4,355,860, an all-time low. See *Social Security Bulletin*, Vol. IV, pp. 49-50, November, 1941.

ment during the years since 1933, the Federal government has spent billions of dollars on a work relief program. Although most governments have preferred the less-expensive direct relief, or "dole," the American psychology of plenty has favored work relief. In asking Congress to set up the Works Progress Administration in 1935 Mr. Roosevelt stressed its relationship to the American standard of living, the importance of work relief and improved living conditions, the necessity of finding projects that would absorb large quantities of labor with a comparatively small bill for materials, the importance of locating these projects in communities of greatest unemployment, and the desirability of not competing with private industry. In 1935 alone the enormous sum of \$4,800,000,000 was spent for work relief by the Federal government.

The criticism of W.P.A. is widespread and bitter. In addition to its cost many citizens complain that it has developed a psychology among workers which makes it very difficult to obtain them for agricultural labor and other seasonable work which cannot pay too well. Political corruption is supposed to have accompanied W.P.A. in some states. Projects are sometimes regarded as so absurd that they deserve no serious attention. It cannot be denied that large sums have been spent without absorbing all of those who desire work. Nevertheless, hundreds of thousands of men have been kept busy through a long period when industry had no need for them. Some of the projects have not been particularly impressive—the earlier made-work projects in which men moved earth from one spot to another and then back again were inexcusable. "Boondoggling," as it has been called, is perhaps as bad as the dole for workers' morale. On the other hand, many of the projects have been quite valuable in improving the appearance, the recreational facilities, the educational equipment, and the public works of urban places and the roads of rural sections. The list of accomplishments in a single city, such as New York or Chicago, is beyond the belief of the ordinary citizen who gets his impression from casual talk or newspapers. It is true that some of the work is not so well done as it might be and that costs have been high in comparison with private business; but considering the work-relief aspect and the fact that large numbers of unskilled people have been employed, it is surprising that it has done as well as it has. W.P.A. has been defective in that it has not made it easier to leave the rolls, take temporary

employment, and then be reinstated. That has prevented some workers from accepting private offers of employment.¹

Although originally considered a temporary activity of the national government, work relief has proved its enduring qualities. The Works Progress Administration has been renamed the Work Projects Administration and placed under the Federal Works Agency. During 1940 a provision was put into effect which required all W.P.A. workers who had been on the rolls eighteen months to drop out and spend a time seeking private employment, although sufficient time for such efforts are supposed to be allowed regularly. W.P.A. workers put in about every other day on the projects and receive varying amounts which average about \$65 per month.² During 1941 W.P.A. rolls showed a sharp reduction, falling from 1,858,000 in January to 1,007,000 in September. However, at the beginning of 1942 the lists of those eligible for work relief accounted for an additional million.

Somewhat related to W.P.A. is the National Youth Administration, a division of the Federal Security Agency—at least until the economy drive of 1942.³ The National Youth Administration has been interested in two types of program for youth: educational and vocational. By 1942 it had assisted some two million young men and young women aged 16–24 to complete high school, college, and graduate school, paying them up to \$30 per month for work which they did for their schools.⁴ At the same time, it gave other youth part-time employment on work projects which it was hoped would fit them for private employment.

The Civilian Conservation Corps was considered an adjunct of the United States Army by certain European countries, but it was looked upon as a security agency in the United States. As many as three hundred thousand young men were enrolled at one time in more than one thousand camps scattered throughout

¹ See John Millett, *The Works Progress Administration in New York City*, Public Administration Service, Chicago, 1937; and Arthur Macmahon, John Millett, and Gladys Ogden, *The Administration of Federal Work Relief*, Public Administration Service, Chicago, 1941.

² The average was \$60.20 per month prior to an 8.5 per cent increase granted November 1, 1941, which lifted it to \$65.40. Wages vary from \$31.20 in rural areas in the South to \$94.20 in certain urban regions.

³ There was considerable question early in 1942 whether N.Y.A. would be continued, though some of its functions might be financed out of the \$100,000,000 appropriation requested by the President for youth services.

⁴ Approximately 450,000 students were aided in 1941–1942, the monthly average being 340,000 to January, 1942.

the country.¹ They received a certain amount of education, both general and vocational, and did valuable work in improving parks, forests, trails, and so forth. Not until 1941 was military drill without weapons ordered, although Army officers frequently supervised the training.

MISCELLANEOUS

Included in the Social Security Act of 1935 were several provisions relating to child welfare. The problem of homes in which the breadwinner has died or is incapacitated has long been a serious one. The Federal government in 1941 assisted forty-four of the states and two territories in making financial allowances to more than nine hundred thousand children located in almost four hundred thousand homes.² The various state plans vary, but they must meet the minimum standards laid down by the Social Security Board. In those states where the programs are such as to meet federal approval, 50 per cent of the cost is assumed by the national Treasury.³ Aid is regularly given children up to sixteen years and in some instances may be continued beyond that time. Monthly payments per family average approximately \$33.00, varying from \$13.38 in Arkansas to \$55.51 in Massachusetts in September, 1941.

Security
for
Children

In addition to the grants made to dependent children by the Federal Security Agency, the Social Security Act of 1935 authorizes the Children's Bureau to spend \$1,500,000 annually in aiding "state public welfare agencies in encouraging and assisting adequate methods of community child welfare organization in areas predominantly rural and other areas of special need . . . and to pay part of the cost of district, county, or other local child welfare services in areas predominantly rural."⁴ This money does not go to maintain children in homes or institutions, but provides experts in child welfare, child psychology, and so forth, to furnish services to children needing attention.

Child
Welfare
Services

¹ In 1941 about two hundred thousand boys were enrolled in these camps. It seemed probable that C.C.C. would be combined with N.Y.A. in 1942 or abolished entirely. The congressional committee on nonessential expenditures recommended the latter course, but the President inserted an item of \$100,000,000 in the proposed budget for 1943 for youth services and instructed the F.S.A. to draft an order consolidating C.C.C. and N.Y.A.

² As of September, 1941, 926,000 children in 384,000 families were aided.

³ For an authoritative article on this service, see Jane Hoey, "Aid to Families with Dependent Children," *Annals of the American Academy of Political and Social Science*, Vol. CCII, pp. 74-81, March, 1939.

⁴ See Mary Irene Atkinson, "Child Welfare Services," *ibid.*, pp. 82-87. This amount has been increased to more than \$2,000,000.

Another provision of the Social Security Act of 1935 relates to the blind. Several states have long made some attempt to pension these people as well as to maintain schools for their training. **Assistance for the Blind** The Federal government contributes half of state pensions up to \$40 per month in those states which have passed legislation meeting its standards. More than forty states have qualified for federal assistance and about fifty thousand blind persons are receiving pensions which average about \$25 per month.¹

There are approximately 125,000 persons in the United States at any one time who need vocational rehabilitation because of physical handicaps. A program was instituted for these people as early as 1920 by Congress, but the Social Security Act of 1935 stipulates the extension and permanence of this service. **Security for the Handicapped** Federal funds to the amount of some \$2,000,000 are distributed annually among the forty-nine states and territories that have agreed to match federal grants and meet federal requirements. Artificial limbs are purchased, vocational training is given, and an attempt is made to secure suitable jobs for these unfortunates after their training has been completed.²

Still another provision of the extraordinarily important Social Security Law of 1935 charges the Children's Bureau with promoting the health of mothers and children, and with diagnosing and treating crippled children. Fifty-one states and territories have qualified for federal grants-in-aid under the first program and fifty for the crippled children's work. About \$4,000,000 annually is distributed among the states and territories on a fifty-fifty basis for maternal and child health services. Prenatal clinics have been set up in more than five hundred places. Something like a million diphtheria immunizations and more than a million smallpox vaccinations are given annually; dental inspections exceed a million and a quarter; general health examinations of school children run to a million and a half a year; while more than twelve thousand midwives are being trained, largely among the Negroes. The crippled-children program allots about \$3,000,000 per year

¹ See Peter Kasius and C. E. Rice, "Assistance for the Blind," *ibid.*, pp. 95-99. In September, 1941, 43 states aided 50,421 cases, paying an average of \$23.68 per month, varying from \$8.99 in Arkansas to \$46.65 in California. See *Social Security Bulletin*, Vol. IV, p. 40, November, 1941.

² See John A. Kratz, "Security for the Handicapped," *ibid.*, pp. 100-104.

to those states that provide matching sums for the surgical care, hospitalization, and care of some 150,000 children.¹

Long under the Treasury Department, the United States Public Health Service has appropriately been transferred to the Federal Security Agency. This service is well known for its work in stamping out yellow fever, its cooperation with the Latin-American republics in meeting difficult health problems, and its campaign to deal with venereal disease. Also, it inspects vessels coming to the United States from foreign ports. However, it has not thus far been given a great deal of authority in connection with the general health of the country. President Roosevelt has appointed an Interdepartmental Committee to Coordinate Health and Welfare Activities, which in turn has a subcommittee on Medical Care. An elaborate report was formulated in 1938 which was presented to a National Health Conference held in Washington. It was stated that one-third of the population of the country is receiving "inadequate or no medical service," that "preventive health services for the Nation as a whole are grossly insufficient," that "hospital and other institutional facilities are inadequate in many communities," and that more than a third of the population "suffers from economic burdens created by illness."² A federal program of grants-in-aid which would eventually require the expenditure of several hundred millions of federal funds each year was proposed. The opposition of the medical profession and the plea of economy have thus far prevented any action on this proposal, although there has been much discussion of the problem and the work of the committee is being continued. The shocking state of health of the young men called for military training³ may focus the attention of the nation on the importance of health after the national emergency has subsided.

The United States Office of Education is included in the Federal Security Agency at present, although it was long in the Department of the Interior. Its work is not directly related to social security, but it is certainly indirectly concerned with these

United
States
Public
Health
Service

Office of
Education

¹ See Katherine F. Lenroot, "Health Security for Mothers and Children," *ibid.*, pp. 105-115.

² See G. St. J. Perrott and D. F. Holland, "Health as an Element in Social Security," *ibid.*, pp. 116-136.

³ Some forty-three out of one hundred in the supposedly most healthy age group have been found somewhat unfit, although fifteen of this number are reclassified for limited military service or active service after correction of defects.

problems as well as many other problems. The Federal government does not at present engage in direct educational activities beyond conducting Howard University for Negroes in Washington. Yet the Office of Education is credited with considerable influence in American education. Its research projects lead to the publication of numerous valuable reports. Its experiments in adult education through forums have been significant. A division handles the exchange of professors and scholars with Latin-American countries. Another is attempting to integrate the in-service training programs of the various agencies. If the proposed federal aid plan which calls for the spending of hundreds of millions of federal money for improving public-school standards is finally adopted, this office will doubtless have even more to occupy its attention.

THE PUBLIC HOUSING PROGRAM

The housing activities of the national government are entrusted to the National Housing Agency; but since they are of particular interest as a means of social security and social improvement, they may be considered at this point.

It is probable that no major country in the world has been so indifferent to public housing as the United States. Surveys have indicated that a substantial proportion of the housing facilities now in use is entirely outmoded, while approximately 10 per cent is actually unfit for human habitation.¹ The United States has some of the worst metropolitan slums in the entire world, while some of its coal camps and industrial towns are equally shameful blots on our record. Nevertheless, prior to 1937 almost no improvement was attempted. Cities occasionally undertook to clear limited areas and to construct low-cost housing facilities, but they had neither the financial resources nor the inclination to do more than a drop in the bucket, so to speak. The Federal government entered the field in a small way in 1933 when it appropriated \$25,000,000 for subsistence homesteads. Although great publicity was given to this project and extravagant claims made as to anticipated results,² this project turned out to be a great disappointment. Plans were not drawn with any degree of common sense, with the result that houses which were

**Indifferent
Record
Prior to
1937**

¹ See the report of the investigations conducted by the W.P.A. in 1936.

² The widely advertised resettlement of relief recipients on Alaskan farms was a part of this project, and similar experiments were also conducted within the several states.

intended for people with incomes of \$1,500 or less and announced as costing \$4,000 or \$5,000, actually finally ran to \$12,000 or \$15,000 in some cases.

In 1934 a National Housing Act was passed which instructed the Public Works Administration to undertake a limited amount of public housing construction. P.W.A. set up some fifty projects located in thirty-six states as direct responsibilities of its housing division. In addition, it announced that it would assist limited-dividend corporations in financing low-rental housing construction. The former undertakings have varied in their usefulness and general success; a Negro slum-clearance project in Indianapolis was left more or less abandoned for months while its brick walls cracked and sagged, while a huge project covering some twelve blocks in the Williamsburg area of New York City apparently encountered less misfortune. Although several insurance companies responded, the efforts to assist private corporations did not prove too successful because private capital was not attracted by the terms offered.

The first genuine housing act was passed by Congress in 1937—the earlier acts had been principally interested in giving employment and extending relief rather than in providing low-cost housing.

The act of 1937 provided for a United States Housing Authority with an initial borrowing power of \$500,000,000. This agency, which was a part of the Federal Works Agency, had an administrator at its head and maintained a fairly elaborate staff in Washington, but it did not engage directly in the construction of housing. Instead it received proposals from state or local housing authorities which it examined with care and either accepted or rejected. If it deemed the proposals sound, it agreed to lend to 90 per cent of the cost of building, or make capital grants up to 80 per cent of the amount required, or offer annual contributions not to exceed an aggregate of \$20,000,000 during a three-year period if the local authority put up an amount at least one-fifth as large. No state is permitted to receive more than 10 per cent of the funds available. The amount expended per family dwelling-unit is limited to \$4,000 or \$1,000 per room in cities under half a million—in larger cities it may go up to \$5,000 per unit or \$1,250 per room. These projects are intended for urban dwellers, must displace an equal amount of slum dwellings, and may be rented only to those whose incomes do not exceed a stated sum, usually \$1,500 per year.

The Housing Act of 1934

The Wagner-Steagall Act of 1937

Applications poured in on the U.S.H.A. until the amount of money available was assigned. Construction started shortly thereafter and many of the projects have (1942) been finished, although delays have held up completion in certain cases. There has been a vigorous demand on the part of lower middle-class people for the new quarters, but the very poor have found the prices rather stiff, despite the federal subsidies. It has been alleged that new slums have been created by the poor who were dispossessed from the tenements which had to be razed to make way for the new housing. Nevertheless, there was considerable sentiment to appropriate large additional sums for extending the experiment. The President requested new appropriations from Congress, but the opposition of private real-estate interests was sufficient to defeat the passage.

**Difficulties
Encoun-
tered by
U.S.H.A.**

The national defense program brought additional housing problems both to the national government and the local governments. Cities which had normally given residence to fifty thousand persons found themselves faced with the necessity of accommodating additional thousands brought in to furnish labor for greatly expanded munitions works. The construction of powder plants in rural areas required provision for large numbers of workers and their families in places where almost no housing facilities were available. Private endeavor contributed toward meeting the need, but the national authorities found themselves faced with an insistent demand that they supplement these efforts. The result was that Congress from time to time appropriated a good many million dollars for the construction of low-cost housing in defense areas. Instead of making use of the existing United States Housing Administration, political and personal considerations led to the entrusting of this task to other agencies of the Federal government, especially to other subdivisions of the Federal Works Agency.

By 1942 some sixteen different federal administrative agencies were more or less active in the housing field. Some of them were trying to do one thing and others might be doing substantially the same thing or attempting something quite different; frequently their efforts were far from coordinated. Some of the building was so poorly planned that the workers for whom it was intended refused to occupy the new houses. The situation became so unsatisfactory that the President issued an executive order on February 24, 1942, creating a new National Housing Agency which was en-

**Creation
of the
National
Housing
Agency**

trusted with the responsibilities which had been exercised by the sixteen separate agencies hitherto active in promoting public and private housing. Three general divisions of this new department were at once announced as follows: the Federal Housing Authority, the Federal Housing Administration, and the Federal Home Loan Bank Administration. The first was given full responsibility for housing constructed with public funds, thus taking over the work of the former U.S.H.A. and the various defense housing bureaus. The second and third were to deal with the financing of private home construction and ownership.¹ Time will be required to determine the full results of this executive action, but it is to be hoped that the formal recognition accorded housing together with the coordination of federal efforts in the field will bring about substantial progress which has so long been called for.

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¹ The functions of these divisions are discussed in Chap. 27 above.

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CHAPTER XXXII

PLANNING AND CONSERVATION

PERHAPS no important government has been so backward as the United States in the areas of planning and conservation. For example, our timber resources which originally probably exceeded those of any other country, with the exception of the Soviet Union, have been permitted to dwindle away in the most prodigal fashion, until an acute shortage seems to be in the immediate offing. Furthermore, we have tried the same experiments, such as silver purchases, over and over in spite of the fact that their serious shortcomings have been demonstrated. We have poured out untold millions on projects, such as the Passamaquoddy hydroelectric project, that even had they been carefully planned in advance would have been of questionable advantage. We have experienced the most paralyzing economic depression, yet taken few steps to ward off an even more devastating recurrence. In general, our national policy has been to live from day to day, trusting that somehow or other the future would take care of itself. That is not to say that there have been no efforts of any consequence along these lines, for our forest service can point to a good record over a period of years while our reclamation projects have been numerous. But considering the situation as a whole it has only been within the last decade that we have made a reasonable effort to accept these responsibilities and even now the program is comparatively minor.

NATIONAL PLANNING

During the earlier part of our national history we were so generously endowed with natural resources that it seemed quite unnecessary to look to the future. True we had periodic panics which caused great upheaval along our otherwise fairly even path, but these did not last too long and were considered acts of God to be borne as cheerfully as possible. As our population has doubled and redoubled, spreading from coast to coast, the generous margin of wealth which we have more or less taken for granted has diminished appreciably, until there is now some question as to

**American
Attitude
toward
Planning**

how much remains. Nevertheless, despite the all too numerous indications of grave future troubles, we have been most reluctant to plan any steps that might at least keep the situation within control, even if a complete preventive is out of the question. Why have we behaved so immaturely as a nation? Some would say that we are a young country and that a display of reckless irresponsibility is natural. But a century and a half is a considerable span of life for a single national government, especially in these days of totalitarian ravages. Moreover, though the New World was primitive, we did not start out as barbarians; we had the background of the English, German, Scandinavian, French, and Italian stock from which we sprang, and we should have found a century and a half a long enough period for childhood and youth. To some extent it is probable that the very richness of our endowment has encouraged an attitude of profligacy. What does it matter if millions of acres of land are laid waste by erosion, injudicious farming, ruthless lumbering, strip mining, and other evil practices when there are still millions of additional acres as yet untouched? With the habit of carelessness ingrained, it is not easy to transfer to a more responsible attitude, even when the surplus is rapidly vanishing.

But perhaps more basic than any of these explanations, particularly during recent years, is the phobia associated with government planning.

American Planning Phobia Unfortunately public planning is identified in the minds of large numbers of people with the Soviet Union, bolshevism, the appropriation of private property, mass "liquidation,"¹ the breakdown of the home, the abandonment of the church, and all manner of other evil. Just why planning should be regarded as synonymous with these institutions and malpractices, it is not easy to determine. Doubtless the publicity which has been given to the Five-year Plans of the Soviet Union and the more recent Four-year Plans of the Third Reich has served to convince some people that planning is an integral aspect of totalitarianism. At any rate the mere mention of government planning is enough to send cold shivers down the spines of many American citizens. This is, of course, reflected by the suspicion with which Congress itself observes the planning agencies of the Federal government.

Actually there seems no valid reason for associating public planning

¹ "Liquidation" is the term applied to the practice of killing off large numbers of people who are suspected of being inimical to the persons or the programs of men who have seized the leading places in a government.

with any particular form of government. All governments, both democratic and totalitarian, levy taxes, and no one imagines that the taxing power is the embodiment of any one concept of the state. Similarly planning, as a function of government, should be viewed as inherent in the very institution rather than as being a distinguishing characteristic of any one type.

While it would be an error to minimize the importance of public planning in the totalitarian governments, it is still probable that in a democratic government it is a function even more essential to efficient operation. Under the totalitarian setup one man or a few men hold the destinies of the nation more or less in their own hands; consequently by the very nature of the case there is apt to be a more or less integrated program. It may be, of course, that their program concerns the immediate future, but it is nonetheless a form of planning. In the democratic governments, especially in the representative form which we have, there is not the unifying force so obvious in totalitarianism the world over. The President contributes to this end, but even when a vigorous and ingenious man occupies the office it is difficult for him to control to anything like the extent to be noted in Germany, Italy, and Russia. When Congress follows one course, when the President holds somewhat different ideas, and when the administrative agencies operate with considerable leeway, there is bound to be confusion and conflict unless some attempt is made to set up a plan toward which all of the efforts will be directed.

**Role of
Planning
in a De-
mocracy**

Needless to say, it is far more difficult to put a far-reaching plan in operation in a democracy than in a dictatorship. Despite widespread disagreements and lack of enthusiasm for the contents of a plan, it is only necessary to have the dictator proclaim the plan as effective under a totalitarian form of government. It may be that internal conflict will prevent its smooth operation and that the results will be far less than the goal set forth, but the plan will be at least nominally observed. In a democratic government it is necessary to obtain the consent of many jealous agencies and branches even before the plan can be accepted at all. Moreover, while a ranking administrator in a totalitarian state can be and often is shot because he fails to carry out his part of a plan, in a democratic country the most severe penalty is likely to be removal from office.

**Difficulties
of Planning
in a De-
mocracy**

The total result is that extensive planning is infinitely difficult under a democratic form of government. Indeed there are those who regard it as absolutely beyond the realm of possibility. However, as problems become more complicated and as resources approach the point of complete exhaustion, it would seem that democratic peoples simply must regiment themselves enough to make feasible the necessary amount of long-range, over-all planning. That is not to say that every phase of human life should be regulated by a plan, for there are many fields in which the government can best leave the responsibility to other agencies. But when the very national existence depends upon following a given course, it is essential to surmount differences of opinion, petty jealousies, local interests, and working at cross-purposes which so often characterize the political institutions of the United States.

A master plan may be required under certain exigencies, but it has its drawbacks, particularly in a democracy. To begin with, it may be **Over-all Planning** virtually impossible to get it adopted. After that obstacle has been surmounted, the plan may be so top-heavy that its very complexity will result in its eventual collapse. There will probably be so many groups shooting at various aspects of a master plan that the entire program will be punctured full enough of holes that it cannot do more than keep afloat. The Five-year Plans which the Soviet Union has followed since the late 1920's are variously evaluated as far as accomplishments go, but there is considerable doubt that they have achieved nearly as much as they set out to do. Therefore it may well be questioned whether it would be advantageous for the United States to attempt anything so elaborate.

Another form of public planning, which may be designated "specific planning" for want of a better term, occasions less publicity than **Specific Planning** all planning; but it has, nevertheless, many strong points. It is less difficult to draft a series of plans relating to specific problems and agencies than it is to prepare a master plan embracing the entire field of governmental activity. Moreover, in a democracy it is far easier to get these less ambitious plans adopted by the necessary authorities, since they will occasion less suspicion and concentrated opposition. After these specific plans have been adopted, there is a further advantage in that they will usually arouse far less organized opposition than would a master plan. Of course, one group is likely to object to one of the plans and a second group to see serious weaknesses

in another, but all these opponents will not focus on a single point.

It must be admitted, however, that specific plans have their weaknesses. They may be so incomplete that they can do little to meet a critical situation. Also, one plan may seek to bring about a certain end, while another plan may aim at the very opposite. Any one familiar with the New Deal planning immediately following 1933 will perhaps agree that this was a very serious fault in that connection. The plans of one agency called for increasing farm prices, while another corporation tried to beat prices down. One plan aimed at reasonable inflation of a general character, despite the fact that another seemed to attempt the *status quo* or even deflation. In contrast to schemes that would plead for the cooperation of private business and the restoration of confidence among business men, there were plans that undermined what confidence there was. If specific planning is to be used—and it appears to offer the greatest advantages in the United States at present—there must be some method by which various plans can be coordinated. A single planning agency might be able to serve this purpose if given the proper authority. The chief executive might exercise this power; but he is already so burdened that it is questionable, judging from recent experience, whether he could go far in this direction. A strengthened cabinet, such as Professor Corwin suggests,¹ might be the best agency of all to undertake the necessary integration. Representing both Congress and the general executive departments, it should have a broad point of view, be reasonably free from selfish interests, and possess the prestige to carry its decisions into effect.

As early as 1933 President Roosevelt issued an executive order creating a National Planning Board. This was reorganized the next year into a National Resources Committee, given independent status, and charged with carrying on a number of studies of pending problems, especially in the conservation area.² Experts were recruited on a full-time basis or called in from the universities and research institutions to undertake special studies. The formation of state planning boards was encouraged, until most of the states had at least paper agencies of this character. A

The
Problem of
Coordina-
tion

National
Resources
Planning
Board

¹ See his book *The President: Office and Powers*, New York University Press, New York, 1940, pp. 304-305. See also Chap. 15 above.

² The best source of information in regard to this board and its activities is its own report entitled *National Planning Board, Final Report 1933-1934*, Government Printing Office, Washington, 1934.

committee of eight men¹ laid down policies which were put into effect by a full-time director and staff with offices in Washington. Regional offices sought to coordinate the efforts of the state planning authorities with those of the national committee. Congress, representing the popular distrust of planning, became suspicious of the activities of the National Resources Committee and in 1938 refused to make an appropriation for its work; but the President rescued it from its plight and supplied money from other sources. In 1939 the National Resources Committee was reorganized, the Federal Employment Stabilization Office was merged with it, the combination was renamed the National Resources Planning Board, and it was transferred from its independent status to the executive office of the President.² Here under the immediate direction of Franklin D. Roosevelt himself it is engaged in studying a number of pressing problems, some of which are of immediate importance and others of which are more long-range in character.

The several planning agencies which have carried on their work in Washington since 1933 have produced a number of valuable studies and worth-while recommendations. The whole problem of land use has been investigated. Water use, energy, regional planning, housing, consumption, technology, and population have also come in for attention.³ The mineral resources of the country have been studied. One of the most valuable reports was made by an urbanism committee which the central committee set up to investigate the problem of cities.⁴ How much practical influence these studies and recommendations have had it is difficult to judge. When certain legislation has been undertaken, the findings have been available as a sort of foundation for drafting the bill. Thus far it is probably accurate to say that the practical results have not been

**Nature of
the Work
of the
National
Planning
Agencies**

¹ This committee was inter-departmental in character, including in its membership the Secretaries of Agriculture, Commerce, Labor, War, and Interior, Harry Hopkins, and two civilian members, Mr. Delano and Professor Merriam. An executive committee of three members handled much of the work.

² This was done in connection with the administration reorganization authorized in the act of 1939. This particular change was announced in the Reorganization Plan 1 which became effective July 1, 1939. The Emergency Relief Appropriation Act of 1939 provided that this board should be made up of three persons "from widely separated sections of the United States."

³ For a list of its reports, see pamphlet entitled "National Resources Planning Board," pp. 5-10, May 1, 1941.

⁴ A summary report was issued entitled *Our Cities*, Government Printing Office, Washington, 1937. This was followed by two supplementary volumes containing detailed findings, published by the Government Printing Office in 1937 and 1939 respectively.

spectacular, but the frequent reorganizations have made a far-reaching program difficult. Moreover, the money available has not permitted anything like so elaborate a staff as would be required for extensive planning. Finally, the very nature of some of the reports is such that a considerable period of time will be necessary to determine their influence.

Since early in 1941 the National Resources Planning Board has been engaged in drafting a plan and stimulating the interest of the state and local governments in planning for the period after the national emergency. In a preliminary statement the **Postwar Planning** following questions have been put:

What happens to the demobilized workers and veterans and their families? Will they be without work? Will they stop producing? Will the national income drop fifteen billion dollars or so as soon as the pent-up demands are met? Will the succeeding drop in consumption throw others out of work and reduce national production and income another ten to twenty billion dollars? If so, we shall be back again in the valley of the depression and a terrific new strain will be thrown on our whole system of political, social, and economic life. The American people will never stand for this. Sooner or later they will step in and refuse to let matters "work themselves out."¹

The board asserts:

The workers and farmers of America, the business leaders of America, and the public officials of America know that the problems we face when the war ends are too big and complicated to be solved by the workers, the business men, or the government working alone or independently. . . . A cooperative program for transferring 23,000,000 men smoothly and quickly to all-out production for normal living, when this war is over, will require advance thinking, discussing, planning, and organizing for action.²

The board then concludes that:

In accordance with the need for full employment and the decisions the American people have already made on the maintenance and extension of personal freedom, security, and opportunity, the central objective of our post-defense planning may be summarized as follows: (1) We must plan for full employment, for maintaining the national income at 100 billion dollars a year at least; (2) We must plan to do this without requiring work from youth who should be in school . . . and without asking anyone to work regularly in mines, factories, transportation, or offices more than forty hours a week or fifty weeks a year, or to sacrifice the wage standards which have been set; (3) We must plan . . . to use to the utmost our system of mod-

¹ See a pamphlet issued by the board entitled "After Defense What?" (1941).

² See *ibid.*

ified free enterprise with its voluntary employment, its special reward for effort, imagination, and improvement, its elasticity and competition . . . ; etc.¹

Finally, the following fields are specified as requiring exploration and planning: demobilization, public works, industrial methods, service industries, including medical service, entertainment, travel, and so forth, social security and work relief, financing, and the international scene, including the feeding, clothing, and furnishing of medical care to other nations.²

A casual perusal of the above statements will give some idea of the magnitude of the problem of postemergency planning alone. To what extent adequate plans can be drafted which will enable the objectives to be attained, is, of course, a question, but few would dispute the desirability of taking steps that will prevent an even more severe economic and social cataclysm than we suffered following 1929.³

Supplementing the efforts of the National Resources Planning Board are activities carried on directly by the several administration departments. In other words, national planning is by no means entirely handled by the single agency in the executive office of the President. The Treasury Department, for instance, is engaged in studying the problem of future federal financing. The Federal Security Agency is drafting plans for the future social security program, public health, and public education. Agriculture is vitally interested in planning for the farmer. Indeed almost every major department of the national government is doing some planning. The efforts may be inadequate or they may be impressive; they may concern only next month or next year or they may attempt to look forward five or ten years; but they cannot, nevertheless, be ignored.

CONSERVATION OF NATURAL RESOURCES

The problem of planning is closely related to the conservation of natural resources, for without planning there is likely to be little or no activity in the conservation field. Even the Federal government cannot suddenly reforest all of the cutover land, reclaim all of the arid wastes, or develop all of the water power. A step must be taken now and another when additional funds are available, but in any case plans

¹ *Ibid.*

² *Ibid.*

³ A valuable pamphlet on this subject, entitled "Guides for Post-War Planning," has been prepared by the National Planning Association, November, 1941.

must be drafted, even in the case of the work which is to be undertaken at once. The President's Committee on Administrative Management considered conservation so important that it would have reorganized the present Department of the Interior into a Department of Conservation¹ that would rank as one of twelve major administrative agencies of the Federal government. Congress did not carry out this recommendation and consequently there is no one department which devotes itself entirely to this work. However, the Department of the Interior expends much of its energy on conserving natural resources, while the Agriculture Department and several independent establishments, such as the Federal Power Commission and the Tennessee Valley Authority, carry on important activities in this field. We shall now proceed to a consideration of several of the more important conservation programs of the Federal government.

One of the earliest conservation activities of the national government was in connection with the preservation of forests. By the end of the nineteenth century it had become apparent that the rich **National** timber resources would not last forever and the movement **Forests** for the government to acquire some of the remaining forests for preservation began to gain ground. The lumbering interests were by no means enthusiastic at the prospect of having lands that they might want to cut removed from the market, but public sentiment gradually neutralized their opposition. Theodore Roosevelt and his friend Gifford Pinchot were among the pioneers in the field and, as President, Mr. Roosevelt gave not a little attention to the realization of the plans which had long been urged upon the government. That part of the national domain which was timbered was gradually set aside into a series of national forests scattered over some thirty-three of the states. At present there are approximately 150 of these publicly owned forests which vary from comparatively small acreages to vast stretches exceeding the smaller states in area. If the national forests could be brought together in a single piece of land, they would almost cover the largest state in the Union, Texas.

The national forests are supervised by a Forest Service, which is manned by a staff of general administrators, rangers, and tree technicians. As timber becomes mature, it may be marked **The Forest** for cutting, for otherwise it might serve no useful purpose **Service**

¹ See the committee's report, *Administrative Management in the United States*, Government Printing Office, Washington, 1937, p. 32.

after it had deteriorated and perhaps fallen down. Where growth is too thick to permit the proper development of the trees, thinning operations may be undertaken. In those areas which are not sufficiently overgrown with trees, reforestation is often carried on.¹ Under certain conditions ranchers are permitted to use the national forests for grazing purposes, but stringent regulations now control the evil of overgrazing which at one time threatened the forests. Campers and tourists are permitted to use the forests for recreational purposes, although they must pitch their camps only at designated places.

While the Forest Service has planted millions of trees within the domain which it controls, the reforestation movement has not prospered in the United States as it has in European countries.

Reforestation Despite centuries of lumbering, Germany, at least until 1939, had timber resources which, considering the large population and comparatively small area, were unmatched. Even on private property trees could not be cut without government permission, under public supervision, and then unless two trees had been planted for every one cut. The sacredness of private property in the United States has not permitted any large measure of regulation of lumbering and many companies have been so ruthless in their operations that thousands of square miles have been left as barren as if a positive attempt had been made to render them perpetually unfit for human habitation. Not only has no attempt been made to save the small trees which eventually might have replaced those cut but fires have been allowed to burn the topsoil and make the land barren and unproductive.

The destructive floods and dust storms of recent years have brought home to the American public the importance of forests as a means of holding back water during periods of heavy rainfall and preventing wind erosion of the soil. After the record drought in 1934 a much publicized and ridiculed project was started to plant a belt of trees extending for about a thousand miles from North Dakota south to Texas. The strip to be covered was approximately one hundred miles wide, although plantings were to be in spots rather than over all of that territory. The Forest Service was authorized to supervise the work of the needy residents in the area affected. Many million locusts, spruce, jack pine, and other drought-

**Forests and
Erosion-
control**

¹ In 1941, 145,000,000 trees were planted on 151,337 acres. Altogether 1,157,500 acres had been reforested up to 1942, leaving approximately 3,000,000 acres of National forest land still to be reforested.

resisting trees have been planted and a large proportion of them have lived in spite of the dire predictions made.¹

Although the United States has large areas of very fertile land, it also includes thousands of square miles of land which is too arid for farming and indeed is often too barren for more than a very little grazing. In some of the arid sections there is so little water available that it would be impossible to reclaim the land. However, in certain places streams fed by the snows and more abundant rainfall of the mountains are adjacent to dry land which lacks only water to make it productive. As early as 1902 a Reclamation Service² was set up in the Interior Department to undertake the projects which Congress approved. Since that time numerous areas have been designated for reclamation and hundreds of millions of dollars have been expended on dams, irrigation ditches, and other necessary improvements. Unfortunately political considerations have entered into the selection of the particular projects to receive attention, for the western Senators and Representatives have been quick to realize the political capital that could be made out of reclamation efforts. Every state, and indeed districts within states, has argued that it should receive its share of the projects. The result has been that some of them have failed entirely and for one reason or another have been abandoned. On the other hand, others have been quite successful and are valuable assets to the states in which they are located. Several of the dams for example, Boulder, Bonneville, Roosevelt, and Coolidge, are well known and not only have importance for irrigation purposes but also for the generation of power.

One of the current problems arising out of the reclamation of arid regions of the West is quite vexing—how to reconcile the preparation of more acres for cultivation when the Department of Agriculture is working vigorously to remove other acres from cultivation. The reclaimed land may not be exactly marginal land, but the size of the annual charges assessed against it would seem to make it difficult to produce enough to pay for labor and equipment, to say nothing of a profit. From the national standpoint there seems no compelling reason for spending large sums of public money on projects that are not of the greatest importance. Some of the

A Reclamation Paradox

¹ See *Report of the Chief of the Forest Service*, Government Printing Office, Washington, 1937, pp. 41-44.

² See anon., "The U. S. Reclamation Service," *Service Monograph 2*, Brookings Institution, Washington, 1919.

projects recently in progress have indeed been justifiable, but many are of interest only to the states and localities in which they are situated.¹

Although the United States has for some years been the leading producer of oil in the entire world, it is estimated that even its supply may run out within three to five decades.² Considering the importance of petroleum products to industry and individual comfort, it has been argued that the Federal government should take steps to regulate oil production. During the early years of the New Deal an attempt was made by the federal authorities to prohibit the transportation in interstate and foreign commerce of any petroleum products which were above the amount permitted by state laws or the provisions of the N.R.A. code for the oil industry. Some of the orders issued by Secretary Ickes, the administrator of the code, were unnecessarily harsh perhaps; at least there was complaint among the small producers. The so-called "Hot Oil" case was appealed to the Supreme Court which decided that the Federal government had exceeded its authority.³ Congress then passed a statute which prohibited the shipment in interstate commerce of oil in excess of that permitted to be produced by state laws. To supplement this general law most of the important oil states have joined together into a compact⁴ which provides for uniform rules in regard to the amount of oil to be taken from wells. In 1941 when the oil supply of the eastern seaboard was threatened by the withdrawal of tankers to serve national defense and English needs, Secretary Ickes was appointed by the President to handle the problem of retail conservation of gasoline, fuel oil, and certain other petroleum products. After enemy submarines had destroyed numerous tankers in 1942, Secretary Ickes in the above capacity devised a rationing system to be administered by O.P.A.

Attempts have been made by the Federal government to regulate coal mining, but other minerals have been left more or less untouched.

Conservation of Minerals N.R.A. set up a coal code which, of course, fell to earth with the other codes after the Supreme Court had declared N.I.R.A. unconstitutional. Then Congress passed the Guffey Act of 1935 which provided for a Bituminous Coal Commis-

¹ For a discussion of the general justification of reclamation, see D. Lampen, *Economic and Social Aspects of Federal Reclamation*, Johns Hopkins Press, Baltimore, 1930.

² Estimates vary and are not very dependable because they are based on estimates of consumption and productiveness.

³ *Panama Refining Co. v. Ryan*, 293 U. S. 388 (1935).

⁴ As recently as 1941 New York signed this compact, making eleven states bound by its provisions. California was the only major oil producer not a member in 1941.

sion to supervise the production of soft coal. This, too, the Supreme Court threw out on the ground that mining was not included under the commerce clause of the Constitution.¹ Still undaunted, Congress passed another act which set up a Bituminous Coal Commission with more definite and restricted powers. In the meantime the Supreme Court had become more liberal and this together with the modified provisions of the new law served to secure the approval of the highest court. The coal commission, largely political in composition, got off to a bad start and spent much of its time in internal wrangling. The President finally had to intervene and since that time there has been reasonable progress toward fixing production quotas and prices so as to assist the industry and at least indirectly the cause of conservation.

Many people do not think of the soil as the greatest of our natural resources, although actually it far exceeds any other natural endowment in importance. Perhaps also the ordinary citizen does not see the relationship of land and conservation, for land is land, they argue. However, it has been increasingly realized that land can be diminished in usefulness or even entirely ruined for the immediate future by soil erosion caused by rain and wind. The carelessness of past years has permitted an amazing amount of land to be ruined beyond easy repair; a larger area has been threatened with serious damage. Finally in 1936 Congress passed the Soil Conservation and Domestic Allotment Act which authorizes the Department of Agriculture to take vigorous steps toward coping with the problem.²

It is a popular belief that any attempts at wild-life conservation are primarily for the benefit of vacationers and sportsmen. Actually, however, while some effort is directed toward providing facilities for nonprofessional hunters and fishermen, the primary aim of conserving natural fauna lies in its economic value. Fish and game are valuable as food and birds provide a natural means of fighting insect pests.

Despite a realization in many quarters of the danger to these living resources from uncontrolled and irresponsible hunters and fishermen, the history of the United States is well besmirched with records of complete or partial extinction. The passenger pigeon is entirely gone; only a small remnant of the great herds of bison are left; nearly every important fishing area is dangerously near to being fished out—the

¹ *Carter v. Carter Coal Co.*, 298 U. S. 238 (1936).

² See Chap. 29 for a fuller discussion of this act.

cod and halibut fisheries of the Atlantic coast, the trout and whitefish of the great lakes, and the salmon, seal, and halibut fisheries of the Pacific coast do not produce nearly the volume they might if carefully preserved and intelligently fished. Of late years the national government has recognized its responsibility toward fish and game conservation. Under the treaty power and the authority to regulate foreign and interstate commerce, the national government has taken some steps toward control. The fur-bearing seal in Alaska have been protected by a national monopoly and the herd which prior to that time was nearly depleted has been restored to nearly a million animals. Likewise, some effort has been made by the Wild Life Service to regulate the catch in all national waters. Since the commercial treaty with Japan has been abrogated, however, there is a very real danger of extinction of salmon and seal in Pacific waters by Japanese boats unless a more extensive policing system is carried on. Migratory birds have been protected by the Migratory Bird Treaty with Canada which is enforced together with national game laws by federal game wardens. Herds of elk and bison are protected and in bad winters fed by national park employees and some fish hatcheries are maintained with which to restock streams and lakes. Also, by means of the grant-in-aid system, the states are encouraged to carry on similar wild-life restoration.¹

The United States is fortunate in having many rivers providing large amounts of water power which can be used for generating of electricity. As far back as 1920 Congress created a Federal Power Commission to protect the public interests involved in the development of these resources. The commission found that its task was a difficult one and even with members drawn from the cabinet it did not possess sufficient authority to make much of an impression during its first decade. Then Congress decided to reorganize the commission by providing five full-time members to be appointed by the President with the consent of the Senate. Still the commission did not make much headway until President Roosevelt appointed F. R. McNinch as the chairman of the commission. Under his vigorous and, in the eyes of the utilities, even savage leadership the Federal Power Commission has labored energetically to meet the threats which certain privately owned utilities offered. It seemed to be the belief of

¹ In 1941 under the Pittman-Robertson Act the Fish and Wild Life Service apportioned \$2,530,000 among the states for wild-life restoration. See the *New York Times*, August 13, 1941.

some of these utilities that the water resources of the United States belonged to them rather than to the people. In 1940 the Supreme Court in the *New River* case ¹ upheld the strict regulation by the commission of the use of public water power by private utilities.

T.V.A. has been one of the most controversial topics of conversation in the United States since its inception in 1933. It was argued by the government before the Supreme Court ² that this agency was intended to further flood control, to improve the navigability of the waters of the United States, and to add to the national defense.³ It might, therefore, be appropriately discussed under several headings in this book, but from a practical standpoint it seems to belong to this particular chapter. As a yardstick it is of importance in public planning; as a means of flood control it belongs in conservation. Moreover, its ambitious program of soil-erosion control, reforestation, and development of water power all fit into the general topic of conservation. The original act relating to T.V.A. was passed by Congress in 1933, but it has been amended and added to until after approximately a decade it is far broader than was anticipated.

The Tennessee Valley Authority

The Tennessee Valley Authority is managed by three directors who are appointed by the President with the consent of the Senate. In contrast to most of the administrative agencies which have their principal offices in Washington, even if they do not carry on most of their activities there, this authority has its numerous offices, expert staff, and thousands of employees in the territory which it covers.⁴ An area of something like forty thousand square miles in seven states, with a population of approximately two million people, has been carved out of the South as an empire for T.V.A. Here it constructs dams,⁵ dredges channels, generates electricity,⁶ builds towns, educates the rural inhabitants,

Organization and Functions of T.V.A.

¹ *United States v. Appalachian Electric Power Company*, 85 L. Ed. 201 (1940).

² See *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 (1936).

³ Its importance in connection with national defense has been demonstrated in 1941, for it furnishes much of the power for aluminum production. Additional dams have been authorized on that basis. Also the Aluminum Company of America turned over to the T.V.A. a North Carolina dam site which it owned, and received in return the right to buy T.V.A. power for a twenty-year period. In order to meet national defense needs the T.V.A. plans to expand from a present (August, 1941) capacity of 1,050,000 kw.-hr. to 1,600,000 kw.-hr. in 1942 and 2,600,000 kw.-hr. in 1944. See the *New York Times*, August 15, 1941.

⁴ Main offices are at Knoxville, Tennessee.

⁵ T.V.A. had six completed dams and eleven uncompleted dams at the end of 1941.

⁶ In December, 1941, T.V.A. had a capacity of 1,560,000 kilowatts, but Congress has authorized a maximum of 2,600,000 kw.

seeks to prevent soil erosion, demonstrates the laborsaving devices made possible by cheap electric current, encourages the towns and cities to provide electricity to their inhabitants at reasonable rates, and maintains what it contends to be the best public personnel system in the United States.¹

Amid all of the claims and counterclaims it is difficult to arrive at an objective evaluation of the Tennessee Valley Authority. Few projects have been more eagerly observed by proponents of public ownership or more savagely criticized by the private-utility interests. If one listens to an address delivered by Director Lilienthal of the Authority, one is likely to get the impression that T.V.A. has wrought a social miracle in much of the territory it covers. But if some of the burning statements of Wendell Willkie are examined, almost the reverse picture is presented.² It is difficult to ignore the improvements that have been effected by T.V.A. in farming, household appliances, educational methods, and public health.³ On the other hand, if the utilities are to be believed, the price paid has been tremendous. They say that millions of dollars have been literally stolen by the government from the pockets of the stockholders in private-utility companies; the entire structure of private business is threatened by the unfair competition offered by T.V.A. Critics hoot at the statistics which the T.V.A. directors produce to show what the generating of electricity has cost.⁴ Politicians cry out that T.V.A. is tax free and consequently has placed an unfair burden on the local governments within its territory—even bringing some of them to the brink of bankruptcy. T.V.A. counters that although it does not pay taxes it pays to the governments a sum equal to what taxes would be; moreover, it asserts that it has brought much new taxable property to the area which it serves.

It will be easier to judge the success of T.V.A. after it has operated for twenty-five years or so and has completed the building of new

¹ See C. H. Pritchett, "The Tennessee Valley Authority as a Government Corporation," *Social Forces*, Vol. XVI, pp. 120-130, October, 1937.

² Consult the files of the *New York Times* for the years 1935-1939 for these statements, particularly the article "New Deal Power Program Challenged," October 31, 1937.

³ In 1941 the average T.V.A. consumer used 49 per cent more current than the national average but paid 19 per cent less than the national average for this greater consumption. Total sales in 1941 were 4,974,000,000 kw. amounting to \$21,137,000. See *Annual Report of Tennessee Valley Authority: 1941*.

⁴ The statistics break down the amounts spent for flood control and navigation improvement from those devoted to electric generation. It may be added that competent persons not unduly critical of T.V.A. find these figures unsatisfactory.

dams. Its general effect on the territory which it serves should be much more apparent at that time than it is now. Nevertheless, it is probable that even after that time has elapsed a great deal will depend upon one's point of view. Those who favor a more extensive role for government, even if it means competition with private business, are likely to be far more favorable than those who regard government as an evil which delights in interfering with legitimate business enterprises.¹

Ever since the earliest treaties between the Indians and the white settlers with their guarantees of Indian rights to specific lands, the white people of the United States have felt some responsibility for the race which they displaced. As a sort of compromise between tearful declamations about the "noble redskin" and the cynical epigram "the only good Indian is a dead Indian," Congress has from time to time set aside what now totals about eighty-two thousand square miles as Indian land. The Bureau of Indian Affairs in the Department of the Interior has been created to supervise these lands and in a general way the inhabitants of them. Also a Board of Indian Commissioners, appointed by the President with the consent of the Senate, has been set up to aid the bureau in an advisory capacity. The general policy of the two agencies has been to attempt to individualize the Indian and raise him rather swiftly to the level of white civilization. Indian children have been sent either to special schools or to regular state public schools—in both cases to be taught the facts and ideas of our civilization rather than theirs. While some of the land has been held in trust and the mineral resources leased to private interests, much of it has been divided up into small sections and farming has been encouraged. The total result of this policy has been a rather striking and much publicized failure. Indian agents have sometimes been outstandingly corrupt and have frequently had no interest whatever in their charges. Indian children educated according to white ideals have turned out to be complete misfits, held in contempt both by the whites and by the tribal circle. Individual Indians who had been given small plots of land made no attempt whatever to cultivate and often sold out for enough money to finance a few months of dissipation. About a decade ago, after it had for a long time been evi-

¹ The difficulty of evaluation is indicated by the experience of Professor Herman Finer of the London School of Economics and Political Science who was employed by the Social Science Research Council to make a study of T.V.A. Although he spent some months on the study, it has not as yet (1941) been published because, it is alleged, it is not acceptable to either the directors of T.V.A. or the Social Science Research Council.

dent that the bureau's methods were a failure, the Indian policy was radically revamped. The new emphasis was not on "civilizing" the Indian but on a restoration of community institutions and industries. The plan was to foster tribal institutions and to introduce some of the technical advantages of the white culture. The goal now is not a swift transformation to modern life but a gradual development and redirection.

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CHAPTER XXXIII

TRANSPORTATION, TRANSMISSION, AND COMMUNICATIONS

IN SOME countries the transportation, transmission, and communication facilities are both owned and operated by the central government. In others at least a considerable proportion is publicly owned and operated. Even in those countries in which the institution of private property as well as democratic political institutions is well preserved, it is commonplace to find that the telegraph and telephone systems and perhaps part of the railroads are government owned and operated. However, in the United States these facilities are very largely under private ownership and management. The Alaska Railroad, the Panama Railroad which includes both a railroad and steamship line, and the transmission lines of the Tennessee Valley Authority, are examples of public ownership, but the post office and the United States Maritime Commission are the most important—and in the case of the latter private operation of vessels is the rule.

Instead of owning its railroads, radio systems, or telegraph and telephone lines, the United States has preferred to maintain private management with government regulation. At one time in our history even the regulation of these utilities was omitted, but their monopolistic character, the dependence of the public on their services, and the vicious practices in which some of them indulged made it necessary to impose a certain measure of government regulation. While there is some sentiment in the United States for public ownership of these properties, the bulk of the opinion seems to favor private status. At the present time there is, however, general admission that the public authorities must in the public interest undertake a certain amount of regulation of rates, service, financial practices, and political activities. The main debate is not whether there shall be regulation but rather how much regulation is justifiable. Some would go very far in laying down detailed rules to guide the private owners, while others favor a bare minimum of public supervision. In general, there has been a strong trend in the direction of increased regulation, especially since the economic debacle

Regulation not Ownership the American Way

starting in 1929, but even so the leeway permitted private management is considerable. An exact statement of the extent of government regulation in the United States is almost impossible. To begin with, the national government shares this field with the states and the latter are by no means uniform in practices. Even within the federal sphere there is variation since the degree is contingent upon congressional authorization as well as upon the energy with which the supervising agencies operate. The legislation setting up the Interstate Commerce Commission is more than half a century old and with amendments confers extensive authority over the railroads. It is only within recent years that interstate bus and truck lines have been brought under federal regulation at all and as late as 1941 the Interstate Commerce Commission requested an expansion of its power so that it could establish uniform rules for the weight, height, and length of trucks and buses. Newer agencies rarely have the measure of power which the older ones exercise and hence must proceed more cautiously. Finally, the same commission operating under the same law will present very divergent records under two sets of officials.

There are two clauses in the Constitution which have important bearing on the activities of the national government relating to transportation, transmission, and communications. The post office is administered under the grant to Congress of the power "to establish post-offices and post-roads:"¹ but the greater part of the regulatory program grows out of the power "to regulate commerce with foreign nations and among the several states."² The former clause has required little interpretation, for it has generally been regarded as quite clear. However, the commerce clause, despite its apparent clarity and simplicity, has occasioned conflict between the Supreme Court and Congress during most of the history of the country. Pushed on by public opinion or political considerations, Congress has seen fit to attempt numerous excursions into the regulation of interstate and foreign commerce. In so far as these have concerned interstate railroads, steamship lines, truck and bus companies, telephone and telegraph companies, and other aspects of transportation,

**Basis of the
Federal
Program**

¹ Art. I, sec. 8.

² *Ibid.* Also some of the authority of the Federal government, particularly in the field of water-power regulation, is derived from the clause: "the Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States; . . ." (Art. IV, sec. 3). The power to dispose of or lease public lands carries with it the power to make contractual regulations about those lands.

transmission, and communications, the Supreme Court has ordinarily been quite liberal in upholding their validity, but when Congress has sought to bring in industry, mining, and agriculture the court has until recently interpreted the clause rather strictly.

It is interesting to note that Congress has created almost all of the regulatory agencies outside of the major departments and that, despite **Agencies of Control** recent endeavors in the field of administrative reorganization, they remain independent establishments. The President's Committee on Administrative Management would have brought the commissions which now perform these regulatory functions into at least nominal relationship with the Department of Commerce, but Congress rejected that recommendation directly in 1937 and again indirectly in 1939 when it specifically excluded the most important independent commissions from the scope of the Reorganization Act. The post-office system is, of course, administered by the Post-office Department under the Postmaster General; the regulatory functions are primarily entrusted to such independent establishments as the Interstate Commerce Commission, the Federal Communications Commission, and the Federal Power Commission. Perhaps the best example of an exception is the Civil Aeronautics Board which is attached to the Department of Commerce, although the executive order which placed it there specifically stated that its rule-making functions and adjudications should not be controlled by the Secretary of Commerce. The United Maritime Commission which owns and operates a few vessels, owns and charters to private companies other vessels, and supervises the federal ship-subsidy program is also an independent establishment.

TRANSPORTATION

Three agencies of the national government exercise at least fairly extensive authority over foreign and interstate transportation. The Interstate Commerce Commission is so well established that it ordinarily is given first place among all of the independent establishments. The United States Maritime Commission and Civil Aeronautics Board are much newer agencies, but, nevertheless, wield important powers.

The Interstate Commerce Commission was set up by the Act to Regulate Commerce passed by Congress in 1887. Through the years many other laws dealing with this commission have been added to the statute books, until it is somewhat difficult to obtain a broad view of

their net effect. However, the general trend has been in the direction of making the I.C.C. more important, although so few of the New Deal projects have hinged around it that the average citizen is probably now more familiar with the National Labor Relations Board and other recent additions to the government structure.¹ The I.C.C. at present is directed by eleven members, appointed by the President with the consent of the Senate for seven-year terms. The commission maintains a staff of approximately 2,600 persons and it occupies one of the newer buildings in Washington which in addition to numerous offices has one of the most impressive chambers for holding hearings that can be found in any country. It is organized into twelve main bureaus which carry on the routine work entrusted to it. Besides the commissioners, who may either sit as a body for the most important hearings or in groups of three or so to consider less consequential matters, the I.C.C. employs large numbers of experts in such fields as engineering, rate making, financial organization, statistics, transportation law, and bankruptcy. Most of its work is done in Washington, but it is not unusual for the commissioners themselves and especially for the staff members to go about from city to city.

Interstate
Commerce
Commis-
sion

Although at one time the Interstate Commerce Commission had general oversight over all interstate commerce which Congress saw fit to regulate, the increasing complexity of public problems has led to the establishment of other agencies to relieve it of supervision over telegraph and telephone lines and cables. At the present time, therefore, the I.C.C. devotes its energy mainly to the regulation of public transportation facilities, or "common carriers" as they are called.² It must be noted at the outset that the commission does not take jurisdiction over all transportation, but only that part which is of interstate character; this, of course, actually includes a large part of the common carriers of the United States. The I.C.C. is peculiarly associated in the minds of many people with the railroads and as a matter of fact has spent more time in regulating their activities than on any other function. In addition, it has impor-

General
Functions
of the
I.C.C.

¹ An act passed in 1933 gave the I.C.C. jurisdiction over railroad holding companies and extended its authority over consolidations, but the New Deal has not depended upon it to any large extent for carrying out its program.

² A great array of information dealing with the work of the I.C.C. is included in I. L. Sharfman, *The Interstate Commerce Commission*, 4 parts, Commonwealth Fund, New York, 1931-1937.

tant duties in connection with interstate bus and truck lines, sleeping-car companies, express companies, steamship lines which are owned by railroad systems, bridges, ferries, lighters, terminals, and pipe lines, except those carrying gas and water. Handling its duties requires that it act in at least two important capacities. In the first place, the eleven commissioners constitute a sort of judicial body, commonly designated a quasi-judicial agency, and in this capacity render decisions after hearing the arguments and evidence which are presented to it by railroad companies and its own examiners and attorneys. The decisions are regarded as on a par with those of the federal district courts and appeals may be taken on points of law to the circuit courts of appeals. In addition to quasi-judicial functions the individual members have responsibility for the administrative work of the subdivisions into which the I.C.C. is organized. Most of the staff members are engaged in carrying on the routine duties assigned to the commission, though the reports which they draft and the investigations which they carry on may finally be made the basis for a hearing before the full commission.

The Transportation Act which returned the railroads to private management after World War I instructed the I.C.C. to fix rates, both freight and passenger, at such a level that an average railroad could earn $5\frac{1}{2}$ per cent on its investment. Inasmuch as there was some doubt as what the investment amounted to, the commission was charged with the very difficult task of examining each company in order to establish a fair basis for earnings. After many years the work had not been completed when a change in the law made this information less necessary.¹

The task of fixing rates is always an arduous one, subject to differences of opinion as well as involving enormous amounts of intricate calculations. For example, in ordering a cut of coach fares to 2 cents per mile the I.C.C. encountered the opposition of many railroads which maintained that a reduction was not likely to assist them in improving their net revenues. Even after a trial period had demonstrated that a 2-cent rate would induce more people to travel, the railroads still were of the opinion that with a

The Transportation Act of 1920
Difficulties Incident to Rate Fixing

¹ The Transportation Act of 1920 authorized the I.C.C. to fix rates that would return an average railroad company $5\frac{1}{2}$ per cent return on its investment. Any earnings over 6 per cent were to be divided with the government; the government's half was to be used to assist weak railroads. This required fixing by the I.C.C. of amounts invested by each company. Opposition of the strong railroads finally led to a repeal of the above provisions and hence valuations were not necessary.

2½-cent rate the demand would be just as heavy and in addition the fares more remunerative. So the commission reluctantly approved a trial until it was demonstrated that people would not pay the higher rate in anything like the numbers that had been anticipated.

Freight rates are possibly even more of a problem because they enter so intimately into the financial returns of most railroads. For years there has been a bitter controversy over the rate differential which divides the country into three parts. The territory east of the Mississippi River and north of the Ohio must pay certain basic freight rates; the South has to pay one and one-half times as much; while the West is forced to shoulder rates that are twice as high. Obviously the serious financial plight of most of the railroads has made rate fixing even more difficult than ever.

The
Problem of
Freight
Rates

The general service which interstate carriers render must be approved by the I.C.C. A record of trains which are consistently late in arriving may, after a time, call for investigation; cars which are not maintained in reasonably sanitary conditions also may, if they are prevalent, come in for attention. The frequency of service, the safety of the equipment, the signaling system for regulating train movement, and related items are subject to the commission. Before discontinuing service on a given line or dropping a train from the schedule, the railroad must receive the consent of the I.C.C.

Regulation
of Service

All common carriers are required by law to make regular reports to the Interstate Commerce Commission on an array of matters. Especially important are the reports which deal with the finances and corporate practices which relate to financing. Before they mortgage additional property, float new stock, engage in refunding operations, or do anything that has an important bearing on their financial positions, the railroads must obtain the express permission of the commission.¹

Miscellaneous

The authority of the I.C.C., over the railroads particularly, is so far-reaching that some observers have contended that it amounts to government operation despite the private ownership of the property. That the regulation is extensive can hardly be disputed, but even so the railroad managements are permitted sufficient leeway to rule out government operation.

Far-reaching
Authority
of I.C.C.

¹ Much additional information on the specific functions of the I.C.C. may be obtained from a series of articles which appeared in the *George Washington Law Review* in 1937. See Vol. V, pp. 289-461, March, 1937. See also a current edition of the *Congressional Directory*.

Although the United States leads the world in railroad mileage and possibly in railroad standards and ranks high in commercial aviation, it has for some time held an unenviable position in water transportation, especially in so far as a merchant marine plying between our shores and foreign ports is involved.

United
States Mar-
itime Com-
mission

During certain periods of our history we have been widely known because of our merchant marine, but after World War I the situation became increasingly embarrassing, until our vessels were the source of amusement in many quarters. To begin with, we had a very small fleet in comparison with England and Germany, especially in the passenger class. Perhaps more important than even that was the fact that the vessels, both passenger and freight, were antiquated and slow. Suddenly in the middle 1930's we awoke to a realization that we had scarcely one modern vessel and that the new Japanese freighters with an operating speed of twenty knots or more were making our ships with a speed of only twelve to fifteen knots seem like horses and buggies in an age of motor cars. In 1936 Congress finally passed a Merchant Marine Act to remedy the situation in some measure. A United States Maritime Commission, consisting of five members, appointed by the President with the consent of the Senate for terms of six years, was created to administer the terms of the act.

It is probably obvious that a giant merchant marine cannot be built up overnight or even in the space of a year or so. The Maritime Commission started out by making an extensive study of the problem¹ and then proceeded to formulate a series of proposals for submission to Congress looking toward the construction of approximately fifty merchant vessels per year; on this basis substantial appropriations have been made during the last few years.² The national defense program has made the problem of shipping especially important and led the Maritime Commission to supplement its regular program with a gigantic emergency schedule calling for hundreds of freighters.³ During 1942, some 700 vessels of 8,000,000 deadweight tons are scheduled for delivery, while the first three months

Merchant
Marine
Plans

¹ This report was published as *Economic Survey of the American Merchant Marine*, Government Printing Office, Washington, 1937.

² The exact amount was \$98,809,569 in 1940. In 1941 the amount authorized increased to \$135,180,500, while in 1942 the President recommended appropriations of \$150,178,500.

³ See the *New York Times*, November 29, 1941. By 1943 it is expected that as much tonnage will be completed as during the years 1912-1921. The 1942-1943 output should treble that of World War I.

of 1943 is expected to see another 220 ships of 2,270,000 tons completed. Some 18,000,000 tons altogether had been authorized by the beginning of 1942.¹ It may be added that the national emergency has interrupted the long-range plans for building a merchant marine. Vessels under way or on the point of being delivered to the companies designated to operate them are diverted in large numbers to the war services. The newly completed passenger flagship "America," the largest vessel to be constructed in American yards for merchant use, and many other vessels were taken over as Army and Navy transports.

Prior to the act of 1936 the United States had subsidized its merchant marine indirectly on the basis of carrying mail, but it had refused to follow the lead of foreign governments in taking a more direct role in building up a merchant marine. Some of the mail subsidies were shocking in terms of the amount of mail carried—a breakdown revealed that a single letter on some runs might cost the government \$1.00 or more. The adverse criticism generated by the exposure of the terms of some of the contracts helped to shift the government to a system of direct subsidization. The new program provides that the national Treasury pay half the cost of building vessels intended for foreign trade, that the remainder of the cost be financed by government loan, and that some share of the operating expenses may be assumed by the government. The plans for the vessels are drafted by the Maritime Commission after consultation with the representatives of the companies that are to receive them. Instead of having a great variety of vessels it is the policy of the commission to develop certain standard types which are referred to by code number.² Contracts for a number of these vessels are let at one time and often to a single company on the basis of competitive bids. Although few of the new vessels can compare in speed with the most modern foreign freighters, nevertheless, they represent a considerable improvement over the antiquated ships which have until recently constituted the American merchant marine.

**Financing a
Merchant
Marine**

¹ An additional 2,000,000 tons were authorized in March, 1942 as a result of losses caused by enemy submarines.

² The C-1 class vessels are 417 feet long and have a speed of fourteen knots. They have 460,000 cubic feet of cargo space. The C-2 vessels are 459 feet long, have a speed of sixteen knots, and contain 516,000 cubic feet of cargo space. The latter are being named for the famous American clippers of the last century, "Lightning," "Surprise," "Sea Serpent," "Shooting Star," and "Stag Hound."

The task entrusted to the United States Maritime Commission is a difficult one. It is always hard to overtake competitors who have a decided head start. The cost of construction in the United States is out of all proportion to that in foreign countries. Labor costs, prices of material, the disposition of the building companies to look upon the government as fair game, all enter into the picture. The prices have been so out of reason that the commission has at times been impelled to throw out all bids. After the boats have finally been constructed, it is not easy to find companies with enough resources and experience to operate them efficiently. The apathy of certain American shipping officials is a byword wherever ships flying the United States flag go. Finally, there is the labor problem which in many respects is the most serious of all. The labor organizations which control the employment of those necessary to the land and sea operations of a merchant marine are probably the most irresponsible to be found. Moreover, the general character of Americans who look to the merchant marine for employment is far from superior. Despite the nautical traditions of past generations in certain sections of the country, enterprising and able young men seem now to have little interest in going to sea. The result has been that the dregs of humanity have sometimes seemed to congregate in a ship's crew. The disciplinary problem has been acute and the service rendered on passenger ships has at times been almost incredibly bad.

The fourth reorganization plan, effected by the President on April 11, 1940, combined the Civil Aeronautics Authority and the Air Safety Board into a Civil Aeronautics Board to be attached to, although not entirely dependent upon, the Department of Commerce. This agency does not as yet have the extensive authority over commercial aviation that the Interstate Commerce Commission has over land transportation, but its functions are, nevertheless, quite important. To begin with, it has the power to issue permits for the operation of interstate and foreign air services. A new company wishes to establish a plane service between two cities in the United States—it must first of all obtain the permission of the Civil Aeronautics Board, which grants such permission only if it can be shown that existing services are not adequate and that an actual need for new service exists. Well-established companies may wish to shift their lines or open new routes. For example, in 1940-1941 Pan American Airways sought the consent of the board to add two new links

**Merchant
Marine
Difficulties**

**The Civil
Aeronau-
tics Board**

between the United States and its elaborate South American lines, while the American Export Line, a steamship company, wanted a permit to operate a second clipper service between the United States and Europe.¹

Inasmuch as aviation is not entirely self-supporting, there is the whole problem of subsidies to be handled by the Civil Aeronautics Board. Some lines operate over a territory that produces large quantities of passenger and express business and hence do not require government aid, while others could not possibly get along on the revenues from business. It is the policy of the government to have the country adequately served and to have foreign services to China, Australia, Europe, and especially to the Latin-American countries. This necessitates government grants of financial aid which vary widely, depending upon several factors. In comparison with amounts spent for relief, public works, veterans, agricultural subsidies, the money expended for commercial aviation encouragement is modest; it approximates \$20,000,000 per year.²

In addition to providing financial aid, the Civil Aeronautics Board encourages commercial air lines by arranging for emergency landing fields, lighting and otherwise marking routes, and by furnishing a directional radio service. It licenses planes and pilots and seeks to build up a reserve of pilots by offering courses to college students. In cases of accidents it conducts investigations and attempts to discover the cause, at the same time taking action which may prevent similar catastrophes in the future.³

**Air Sub-
sidies**

**Miscella-
neous
Functions
of C.A.B.**

COMMUNICATIONS

Prior to 1934 the Interstate Commerce Commission was charged with regulating interstate telephone, telegraph, and cable companies, while a Federal Radio Commission gave its attention to radio broadcasting.

¹ This was opposed by Pan American Airways on the ground that it meant a competing service.

² In 1940 this board spent \$21,504,643 for various purposes, including subsidies. Estimates for 1942 are \$25,235,900.

³ Studies which despite their dates may still be profitably consulted are: C. C. Rohlfling, *National Regulation of Aviation*, University of Pennsylvania Press, Philadelphia, 1931; and Kenneth Colegrove, *International Control of Aviation*, World Peace Foundation, Boston, 1930.

In that year it seemed advisable to the President and Congress to bring all interstate and foreign communication facilities together under a single agency and hence the Federal Communications Commission was created. This body has seven members, appointed for seven-year terms by the President with the consent of the Senate. It enjoys far-reaching authority over the entire field of interstate and foreign communications, having jurisdiction over telephones, telegraph systems, and cables, but it is especially active in the regulation of radio broadcasting. It must approve interstate telephone and telegraph rates, fix standards of service, consider proposals to merge companies, and oversee financial practices. Licenses for operating broadcasting stations are issued by the F.C.C., which assigns the wave length to be used, the hours that the license covers, and the strength of the broadcasting equipment.¹ Since these licenses must be renewed periodically, the commission has a considerable measure of control over the policies of local stations, for unless the conditions which it lays down are met it may refuse to renew. One of the conditions stipulates the maximum time which may be allotted to advertising; another requires that at least 15 per cent of the time must be devoted to educational programs; while a third bans scurrilous, indecent, frightening, and other such programs not held to be in the public interest.

The F.C.C. has engaged in bitter controversy with the broadcasting companies over many of its policies. The ownership of radio stations by newspapers has not been regarded as very desirable by the F.C.C. Difficulties the commission, which has taken steps to force a separation in certain cases. The monopolies enjoyed by the N.B.C. and Columbia chains have incessantly worried the commission and in 1941 led to a pronouncement that the former should rid itself of either its Blue or its Red network. The attitude of the commission has been that radio is being used for personal profit rather than for the welfare of the people. Since the commission's attitude is a reversal of emphasis, it is intent upon reforms which will correct the defects. The owners of the broadcasting stations complain that the commission is unreasonable, that it does not understand their problems, and that it fails to appreciate the efforts which they make to maintain the highest standards in the world. Perhaps it is natural that there should be this conflict

¹ During 1940-1941 the commission spent considerable time on applications for FM broadcasting.

during a period when a permanent policy is still in the process of formation.¹ The situation became so tense in 1941 that the Senate received a resolution calling for a congressional investigation of the broadcasting industry and the Federal Communications Commission. The Senate Committee on Interstate Commerce held a public hearing on the resolution which excited a great deal of interest and brought forth a tremendous volume of criticism of the rules and regulations promulgated by the commission. The testimony revealed the outmoded character of the fourteen-year-old basic law providing for the regulation of radio broadcasting and pointed to an early revision of its provisions²

TRANSMISSION

The United States is fortunate in possessing water-power resources, more than 75 per cent of which are located on public lands. The inclination of the private utilities to consider this valuable property their own and the increasing transmission of electricity over high-tension lines across state lines resulted in the establishment of a Federal Power Commission in 1930. This independent agency is directed by five members, appointed for five-year terms by the President with the consent of the Senate, and maintains a staff of engineers, lawyers, and other experts in Washington and the field.

**Federal
Power
Commis-
sion**

The F.P.C. has been authorized by law to pass on applications of private utilities which wish to develop the water power included in the public domain or the navigable waters of the United States. Though private interests have disputed its final jurisdiction in such matters, the Supreme Court in the recent New River case has ruled that the powers of the commission are determining. The Public Utility Act of 1935 expanded the scope of the F.P.C. by empowering it to regulate the rates, services, corporate practices, and financial dealings of private utilities which transmit electricity across state lines; recently interstate pipe lines have been added. This commission, like the Federal Communications Commission, has been enveloped in criticism aimed at it by the private businesses which it supervises.³

**Authority
of the
F.P.C.**

¹ On the somewhat stormy history of its predecessor, the Federal Radio Commission, see L. F. Schmeckebier, "The Federal Radio Commission," *Service Monograph* 65, Brookings Institution, Washington, 1932.

² See the *New York Times*, June 29, 1941, for a report of the public hearing.

³ The problem of regulating the interstate transmission of electricity is discussed by H. L. Elsbree in *Interstate Transmission of Electricity*, Harvard University Press, Cam-

In addition to its routine duties, the Federal Power Commission has assumed responsibility for very important work in connection with the national defense program. In the summer of 1941 it announced a power-expansion program which would entail the annual expenditure of \$470,000,000 annually for the duration of the emergency. Among the projects included in this undertaking are: the production of generators by contract with private manufacturers at a cost estimated to run from \$150,000,000 to \$200,000,000 per year; the construction of steam stations for the generation of electricity at a cost exclusive of generators of from \$75,000,000 to \$100,000,000 per year; an investment of about \$170,000,000 annually in hydroelectric plants exclusive of generator costs; and the setting up of a series of river basin projects capable of generating approximately one million kilowatts per year.¹

Current
Activities
of the
F.P.C.

THE POST OFFICE

During its entire existence the government has assumed responsibility for carrying the mails. Indeed for two decades before the Revolution a colonial post office was operating with a fair degree of success. In 1775 Benjamin Franklin was appointed Postmaster General of the revolting colonies and did much toward building up the system. In 1789 the government provided under the Constitution took over the post office bodily. It was not until 1874 that the present Post-office Department came into existence, although as early as 1829 there had been an informal status which gave to the Postmaster General membership in the President's cabinet.

The Post-office Department has at its head a Postmaster General rather than a secretary, but except in title there is not a great deal of difference between this official and the head of one of the other major departments. Four assistant secretaries divide up the various tasks assigned to the department and report directly to the Postmaster General. There are general divisions which deal with law, auditing, and personnel and a large number of more specialized subdivisions that have to do with railway mail, postal savings, money orders, and parcel post. Though the department occupies a large building in Washington, most of its activities are, of course, carried on

Organiza-
tion

bridge, Mass., 1931, although it does not deal with the recent activities of the F.P.C. under the Public Utility Act of 1935.

¹ *New York Times*, July 17, 1941.

throughout the length and breadth of the United States, for there is scarcely a spot, however remote, that is not touched by the Post-office Department. Regional offices are maintained in large cities and more than forty-five thousand local post offices serve as operating units. The latter are classified as first-, second-, third-, and fourth-class,¹ depending in large measure upon their annual receipts. They are headed by postmasters who at one time were almost nominal in importance because they devoted themselves to politics rather than to post-office duties. An assistant postmaster in reality supervised the work of the clerks, carriers, and other employees. The recent legislation placing the postmasters under the merit system is aimed at correcting this fault. It is too early to judge what the net effect will be, although the success of political leaders in getting their choices among the top three to pass a civil service examination appointed indicates that still postmasterships are not particularly removed from politics.

The Post-office Department has sometimes been pointed to as the largest government agency in the world. Varying conditions make it somewhat difficult to compare departments of different countries, but by any standard the American post office is large. Its forty-five thousand post offices, its more than a quarter of a million employees, its yearly receipts of well over \$500,000,000, and the billions of pieces of mail which it handles every year are impressive. It not only carries letters and other first-class matter, but huge quantities of newspapers, magazines, and books. Since 1913 it has transported enormous numbers of parcel-post packages which contain almost every conceivable commodity. It operates its own insurance system for the protection of those who desire protection of their packages against loss or destruction. A registration arrangement provides unusual care in the handling of valuable letters or packages, while a special-delivery service speeds up delivery after mail has reached its destination. An inexpensive air-mail stamp provides especially speedy movement for first-class mail. Rural delivery routes exceed thirty thousand in number and bring mail to the door of something like twenty-five million people who live in rural areas. Almost three million persons depend upon the post offices for holding and investing their savings to the amount of over \$2,000,000,000. Large numbers of patrons send money from one place to another through the medium of money orders.

Scope of
the Postal
Activities

¹ Approximately 70 per cent of the post offices are fourth class.

The post-office employees in the United States are the most highly paid and the most fairly treated of any post-office employees in the entire world. They are not always able to secure increases in salary and reduction in hours, but their national organizations have been powerful forces in protecting their interests. Post-office buildings in the United States far surpass in elegance and quality of construction any corresponding buildings anywhere—indeed there is some feeling that too many handsome post offices have been built and at too great a cost to the public treasury. The range of services rendered is probably greater than that of any other post offices, particularly if the telegraph and telephone facilities of foreign post offices be excluded. Service is reasonably good although it leaves something to be desired in the eyes of many patrons. In contrast to the evening and Sunday deliveries in certain countries, deliveries in the United States are confined to five and one-half days each week, while when holidays occur on Monday, there is no mail delivery for two and one-half days at a stretch. Movement from one part of the country to another has been speeded up by air mail in many cases, but there are other instances where it seems to require longer now to get mail through than a decade ago.¹

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CHAPTER XXXIV

FOREIGN RELATIONS

FOREIGN POLICY OF THE UNITED STATES

THE foreign relations of the United States have been conditioned in large part by the foreign policy which has been followed. Some observers profess to see nothing in the record of the last century and a half that can accurately be designated "foreign policy," maintaining that the United States has been purely opportunistic in its dealings with other nations. Perhaps if one holds a very strict interpretation this attitude may be tenable, since a consistent policy on the part of any nation over a long period of time is, to say the least, unlikely. World situations change and give rise to new problems which in turn have their impact upon the foreign policies of the various governments. Nevertheless, irrespective of any vacillation and indecision, the United States has maintained certain points of view which have played a large part in determining its role in international affairs.

The warp upon which the United States has woven its intricate pattern of foreign relations has been isolation. From the earliest days of the republic, when George Washington delivered his famous words dealing with entangling alliances, to the infamous attack made by Japan on Pearl Harbor in 1941, there has been a deep-seated desire on the part of large numbers of people to avoid more than routine relations with other nations. As individuals the American people have been fond of traveling outside of their own country and at times public opinion has supported active participation by the United States in world affairs. But when the outcome of such participation has been disappointing and especially when it has appeared that the United States was being duped, the net result has been to strengthen the general suspicion of European diplomacy. The isolationist attitude has doubtless been based in part on the geographical location of the United States in relation to other major world powers. Moreover, the fact that the natural resources have made the country self-sufficient to a degree far beyond that of most other nations has entered in. When Japan sent her bombers to Hawaii and her scouting

planes over the Pacific states, it became apparent that this supposed geographical isolation was less than had been imagined. The declaration of war against Japan, which was accomplished in a few minutes and with only one dissenting vote,¹ and the subsequent unanimous reply to declarations of war made by Germany and Italy, may indicate that isolation has finally ceased to be the basic element in American foreign policy, though time will be required to judge the long-time effect. At any rate it may be noted that in few other instances has there been such prompt and unanimous action in the sphere of foreign relations.

Though the United States has regarded international relations with a wary eye—even to the point of being niggardly in appropriating money for the acquisition of embassies, legations, and consulates abroad—she has insisted that the Western Hemisphere be posted against European aggression. In 1823 President Monroe sent a message to Congress in which he declared: “We owe it therefore to candor and to the amicable relations existing between the United States and those powers [the European nations] to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.” This doctrine was long interpreted as reserving the Western Hemisphere as a sort of sphere of influence to the United States and as such was naturally resented by the Latin-American states. Recent Presidents have sought to correct the impression that the doctrine was based on the desire of the United States to dictate what should be done in the Americas, stressing the community aspects and joint responsibilities shared by all of the countries. The “Good Neighbor” policy of Franklin D. Roosevelt has done much to break down the resentment that long characterized the Latin-American attitude toward the United States. The refusal of his administration to intervene in Latin-American countries to protect investments and the cooperation with such countries as Brazil in sending in a military force to protect Dutch Guiana have been effective in demonstrating the desire of the United States to make hemispheric solidarity and friendship more than a mere pretense.

Hemi-
sphere
Security

Despite the attachment of large numbers of people for isolation, several elements of the population of the United States have been

¹ Miss Rankin of Montana cast the sole dissenting vote. In the declaration of war against Germany and Italy she refrained from voting.

anxious at times to have the government acquire additional territory and support economic penetration of other countries. This phase of our national effort will be discussed in some detail in connection with territories,¹ but it should be pointed out here that it influenced our foreign policy to a considerable extent during the period 1895 to 1930. Even after it appeared that territorial acquisitions occasioned more trouble than they were worth, there was still much pressure to have the United States protect the investments of its citizens and corporations in Central America, even to the point of intervention. The last marine detachment was withdrawn from the Caribbean region as recently as 1934, while the three marine establishments in China were maintained until the very eve of the war with Japan.²

However suspicious they may have been of foreign governments, the people of the United States have favored reasonable efforts to bring about a state of peace throughout the world. World War I received the support of large numbers of people because it seemed that the defeat of the German Imperial Government might remove the main obstacle to world peace. Isolationism, personal antipathies, and partisan politics prevented the United States from joining the League of Nations, but they were not sufficient to nullify several other efforts in the direction of peace. In 1921-1922 a conference on naval limitation was held in Washington, with the United States as one of the principal participants. In 1928 Secretary of State Kellogg collaborated with M. Briand in drafting the so-called "Kellogg Pact," which provided that "the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be shall never be sought except by pacific means." This was signed by all of the major world powers, including Germany, Italy, and Japan. In 1931 Secretary of State Stimson and President Hoover attempted to bring some collective action on the part of the nations of the world that would force Japan to cease her aggression in Manchuria. President Franklin D. Roosevelt has delivered many addresses in which he has pointed out the menace to world peace offered by Hitler, Mussolini, and the Japanese military clique. It seems fair to say that the rising tide of sentiment against the dictators, which became apparent during

¹ See Chap. 45.

² These garrisons were maintained under the terms of the Boxer Agreement with China and cannot be considered as military forces to protect trade interests. Their very size was such that they could do little more than serve as a token of American interest in the Far East. The garrison at Peiping was intended to guard the embassy of the United States.

the period 1939 to 1941, and indeed the final entrance of the United States into World War II, were motivated in large part by the reluctant conclusion that there could be no world peace or security so long as these international gangsters remained unchecked.¹

THE DEPARTMENT OF STATE

It is traditional among governments to maintain a foreign office or a department of foreign affairs. Even in the case of countries far less important than the United States there is almost always a foreign office which devotes itself exclusively to the conduct of foreign relations. The United States has never seen the necessity of following this conventional pattern and from the very beginning of the commonwealth entrusted the supervision of its relations with foreign governments to the Department of State.² It sometimes strikes foreign visitors as strange that a nation as powerful and wealthy as ours should not consider it essential to maintain a department given over exclusively to the conduct of foreign affairs. However, the actual situation involves less amalgamation than appears on the surface, for the Department of State devotes a far greater part of its energy to external than to domestic problems.

The Lack of a Foreign Office in the United States

The Department of State was established almost immediately after the government provided by the Constitution of 1787 began to function. Inasmuch as this department was authorized to carry on the work which had been handled by an agency of similar character set up in 1781 by the Continental Congress, it is sometimes considered to antedate the Constitution itself.

History and Rank of the State Department

Because of its age as well as the importance of its functions, the Department of State stands first, on the basis of formal precedence, among the administrative departments of the United States. Its secretary sits immediately to the right of the President at cabinet meetings and is the ranking administrative official in Washington. The quarters of the department, however, seem almost shabby and certainly antiquated amid the spacious and up-to-date buildings which house the younger government departments in the national capital.

¹ For more extended discussions of American foreign policy, see C. A. Beard, *American Government and Politics*, rev. ed., The Macmillan Company, New York, 1939, Chap. 12; and L. M. Sears, *History of American Foreign Policy*, rev. ed., The Thomas Y. Crowell Company, New York, 1938.

² Argentina is another case where there is no agency devoted entirely to foreign affairs. In that government religious affairs are combined with foreign affairs in a single department.

The annual appropriations are very small when compared with those of the Treasury, the military, and most other departments. The number of employees of the State Department is also far below the rolls of the majority of the important agencies of government. Nevertheless, its prestige is high, its influence often decisive, and its functions of first-rate importance. No other department can boast of so long a line of distinguished secretaries. That is not to say that every Secretary of State has achieved fame or indeed deserved outstanding recognition, for some Presidents have used the position to reward their mediocre friends and supporters. Nevertheless, a roster which includes the names of Thomas Jefferson, John Marshall, James Madison, Daniel Webster, John Hay, Elihu Root, Charles Evans Hughes, and Cordell Hull along with those of a good many other able men commands respect.¹

The Department of State is organized into several divisions,² some of which are geographical in character and others of which follow functional principles. Immediately below the secretary there is an undersecretary, who during recent years especially has been in the limelight. This official has general jurisdiction over the department, exercises final authority in routine matters which do not require the approval of the secretary himself, and acts as the head of the department when the secretary is absent or ill. An adviser on legal matters, particularly points of international law, assists the secretary and the undersecretary in general administration. Then there are four assistant secretaries of state who are charged with responsibility for certain aspects of the work of the department.³ Directly under these officials are the various subdivisions which carry on the actual services.

Four geographical divisions oversee the embassies, legations, and consulates of the United States in the following parts of the world: Europe, the Far East, the Near East, and the American Republics. A Caribbean office, attached to the Divisions of European Affairs and American Republics, has recently been created to concentrate attention on that vital region. These

**General
Organization
of the
Department**

**Geograph-
ical Sub-
divisions**

¹ For biographical studies of these and other holders of the office, see S. F. Bemis, ed., *The American Secretaries of State and Their Diplomacy*, 10 vols., Alfred A. Knopf, New York, 1927-1929.

² For a chart showing the organization of the State Department, see p. 501.

³ One assumes oversight in matters relating to finance, aviation, Canada, and Greenland; a second has charge of commerce and trade; a third deals with legislation, special war problems, and fisheries; and a fourth has to do with budgetary and fiscal matters, general administration, and the Foreign Service.

offices are in constant touch by wireless telephone, radio, cable, personal agent, and mail with the representatives of the United States throughout the world. Daily contact is maintained by wireless telephonic communication with the major diplomatic posts. Radio and cable messages, usually in code, are frequently exchanged between these divisions and the representatives in foreign countries. Officials of these offices regularly visit the various embassies, legations, and consulates for purposes of inspection and rating, while foreign service officers ordinarily stationed abroad may be temporarily detailed for work in these Washington divisions. Finally, for the information of the Department of State numerous reports dealing with the political, social, and economic institutions of countries in which the officials are stationed are prepared and submitted. These are ordinarily transmitted by means of diplomatic mail and play a very significant role in keeping the Washington officials informed of world affairs over a period of time.

There are several divisions of the state department which have to do mainly with international commerce: ¹ the Division of Commercial Policy and Agreements, Division of Commercial Affairs, the Division of World Trade Intelligence, the Division of Exports and Defense Aid, Foreign Funds and Control Division, and Division of Defense Materials. In this connection it may be pointed out that the President under his Reorganization Plan ² transferred the foreign service officers of the departments of Commerce and Agriculture to the Department of State as of July 1, 1939. The Division of Commercial Policy and Agreements received a great deal of public attention during the days immediately prior to the outbreak of World War II.² As Germany and certain other governments attempted to break down what free world trade remained by introducing exclusive barter deals, Secretary Hull bent every effort to counteract such practices by negotiating reciprocal trade agreements with various foreign governments. In 1933 Congress authorized the President to make these within certain limits without the necessity of senatorial ratification. An assistant secretary of state was designated to have general oversight of the program and negotiations were undertaken with a number of foreign governments with whom it appeared that there was a common basis for concessions. Although hearings were

Commercial Divisions

¹ A reorganization in the fall of 1941 resulted in the creation of several of these divisions and changed others. ² Prior to 1941 this was known as the Division of Trade Agreements.

sometimes held at which interested groups in the United States could present their views, in general the discussions leading up to the trade agreements were carried on behind closed doors. The result was that the most vicious pressures were minimized—as is unfortunately not the case when the tariff laws are being revised by Congress—and substantial progress was made in reducing the paralyzing trade barriers which hindered American commerce during the twenties. Attempts to arrive at some mutual understanding failed in a few cases, notably that of Argentina, but reciprocal trade agreements involving important concessions were entered into with Great Britain, Canada, Brazil, Belgium, China, and a number of other governments. The events which have shaken the world since 1939 have, of course, interfered in no small measure with this program, but in 1941 negotiations were renewed with Argentina looking toward mutual trade concessions, and an agreement was finally reached.

During normal times, when thousands of American citizens travel in foreign countries, the Passport Division of the State Department has sometimes resembled a madhouse. Such travel ordinarily has been particularly heavy in the summer months, with the result that there has been a wild rush for passports during the late spring. In addition to the main office in Washington, this division operates branches in New York City, Chicago, and San Francisco. Applications which set forth detailed biographical information in regard to the holder of the passport must be sworn to and must be accompanied by a photograph of the applicant as well as valid proof of United States citizenship. The fee charged is \$9.00. Passports, which are in the form of small leatheroid booklets and serve to identify the bearer as a citizen of the United States, are good for two years and may be renewed for an additional two years upon application to the Passport Division and the payment of an additional fee. Although in normal times passports are not limited and may be used by their holders for travel anywhere in the world, recent events have necessitated restricting the use of most passports to the Western Hemisphere. Only in special cases where valid reasons could be shown were passports issued in 1942 for travel in Europe, the Orient, and most other parts of the world.¹

¹ Government emissaries, newspaper correspondents, missionaries, and in some few cases business men are (1942) about the only ones who can show reasons which the division regards as valid.

Visas of passports are granted to foreign citizens who wish to visit the United States by the Visa Division of the State Department. For some years after the First World War the fees charged for visas were so high as to be burdensome in the case of the ^{Visas} citizens of many countries. Realizing the injustice of such charges the State Department during the 1930's entered into reciprocal agreements with England, China, Egypt, and certain other governments which had imposed visa fees of \$10 on American passports and whose nationals the United States had charged corresponding fees, with resulting reductions running from 50 to 75 per cent. While the Passport Division has been comparatively free from heavy demands during the world emergency, the Visa Division has had to handle large numbers of applications from European refugees. It can readily be imagined how difficult its task has been. On one hand is the desire to be humane, while on the other is the necessity of preventing the United States being overrun by penniless Europeans. In 1941 a policy was adopted which forbade the issuing of visas to citizens of Germany, Italy, or countries occupied by those powers who left near relatives behind.¹ This apparently harsh step was taken on the ground that in those cases the secret police compelled such visitors to the United States to carry on subversive activities by threatening to torture their relatives.

The Division of Research and Publications maintains an extensive library which includes the archives of the State Department. It is charged with the preparation and publication of the volumes which record the foreign relations of the United ^{Miscellaneous Divisions} States.² The Division of Current Information prepares releases to the press and otherwise handles the public relations of the department. A Treaty Division has for some years been engaged in a monumental work of editing and publishing definitive texts of the more than nine hundred treaties to which the United States has been a party since 1789. The Division of Protocol is less important perhaps than certain other sections, but it has to display the greatest tact and caution in carrying out its duties. If it places Minister X ahead of Minister Y in a reception line at an official function or assigns to Ambassador A a better seat at a diplomatic dinner than Ambassador B, it has to be very certain that there is unimpeachable basis for such arrangements; otherwise there may be social rebellion. The task of this divi-

¹ For additional details, see the *New York Times*, June 23, 1941.

² Published in yearly volumes entitled *Foreign Relations of the United States*.

sion in deciding several years ago whether Mrs. Gann, the hostess and sister of Vice President Curtis, enjoyed precedence over Alice Longworth, the wife of the Speaker of the House of Representatives, was almost impossible. The Division of Cultural Relations seeks to promote cordial relations particularly with the Latin-American countries.

In addition to its duties which relate to the conduct of foreign relations, the Department of State is charged with several other responsibilities. It keeps the great seal of the United States which must be attached to certain public documents as an evidence of authority and authenticity. Its secretary must countersign the proclamations which the President from time to time issues; these may be purely routine such as those which announce Thanksgiving or they may be quite spectacular, for example the proclamation in 1941 placing the country on a basis of national emergency. Communications between the national government and the states are usually handled as far as the former is concerned by the Department of State. After bills have been passed by Congress and approved by the President, they go to the Department of State, where they are printed with other acts in the *Statutes at Large of the United States*, promulgated, and their originals preserved in the archives.

THE FOREIGN SERVICE

Before the passage of the Rogers Act in 1924 the foreign service of the United States was rather intimately tied up with politics. That is not to say that there were no competent officials representing the United States in foreign countries, nor that there were no persons in the service who made a career out of diplomacy. Recently it has been popular to make such assumptions, with the result that certain of the senior members of the service whose entrance antedates 1924 feel quite sensitive. Nevertheless, it must be admitted that political considerations played an important part in the matter of appointments prior to 1924. Good people not infrequently received places, but they often had to seek favor at the hands of an administration Senator; promotion, also, commonly depended upon senatorial pressure. In all too many instances intolerably bad appointments were made because of political considerations. Henchmen of political bosses sometimes fell prey to the idea that it would be pleasant to retire at government expense in some foreign capital or commercial center. Of course, they had no knowledge of consular or diplomatic

duties; moreover, they ordinarily were not interested in learning.

After many proposals had been made looking to the reorganization of the foreign service, the Rogers Act was finally passed in 1924. This act placed the American representatives below the ranks of ambassador and minister on a career basis and provided that admission to the service should be by competitive examination only. The former diplomatic and consular services were joined together into a Foreign Service of the United States.¹ The Rogers Act, with amendments which have been added (the most important being the Moses-Linthicum Act of 1931) fixes a definite range of salaries varying from \$2,500 to \$10,000 per year, with allowances for rent, heat, light, and cost of living at post.² It provides that promotion be based on service records. A contributory pension scheme which permits retirement after thirty years of service and compulsory retirement at the age of sixty-five years was set up. The Moses-Linthicum Act supplemented the earlier Rogers Act by bringing the clerical employees attached to the Foreign Service also under the merit system.

**The Rogers
and Moses-
Linthicum
Acts**

Unlike some other foreign services, the British for example, the Foreign Service of the United States does not include ambassadors and ministers. Although these important officials have intimate relations with the career service and certainly must be considered essential to the conduct of foreign relations, still they do not belong to the career service and receive their positions by presidential nomination and senatorial confirmation. The result of this method of appointment, of course, is that politics has not a little to do with the selection of the heads of embassies and legations. Wealthy men of affairs who have ambitious wives make generous contributions to the campaign chests of winning political parties and on such grounds feel themselves entitled to posts as minister or ambassador. They do not always get what they expect, it is fair to say, but they do frequently manage to secure an appointment of some kind. This holdover from an earlier day has been severely criticized because it frequently means that the United States is represented in some capitals by men who may have succeeded in automobile manufacturing,

**Ambassa-
dors and
Ministers
not In-
cluded**

¹ There are four divisions of the State Department which deal with the Foreign Service: Division of Foreign Service Administration, Division of Foreign Service Personnel, Foreign Service Buildings Office, and Foreign Service Officers' Training School.

² These allowances range from \$575 to \$1,500 per year to start out and increase in the upper grades.

the liquor business, newspaper advertising, or local politics but who have a very inadequate background in foreign affairs. Of course, there are always counselors and secretaries of embassy or legation to advise such laymen on technical points, but this is scarcely a satisfactory substitute for expertness.

Some of these amateur diplomats manage to get along reasonably well, while others are so impossible that they occasion diplomatic gossip the world over. When the United States is unfortunate

**Varying
Character
of Non-
career Am-
bassadors
and Minis-
ters**

enough to have a succession of these diplomatic impostors in a single country, it attaches a reputation to its foreign program which is anything but desirable. A certain important Latin-American country a few years ago received in succession two American ambassadors who had had little or no previous experience in foreign affairs, who had read hardly anything of serious nature relating to diplomacy, and who made all too little attempt to inform themselves of proper usages after they reached their posts. Both drank to such excess that they were frequently indisposed for days at a time and even appeared at state functions in an inebriated condition—it may be added that one of them had the illusion that he was a bear during attendance at a presidential reception and shocked the hosts and other guests by parading around the presidential mansion on all fours. It is no wonder that our reputation in that country reached a very low level. It may be stated that these are extreme cases and that greater care has been taken in making diplomatic appointments to Latin-America during the last few years. Another result of this system of appointment is that the turnover is ordinarily rapid, which also makes for lack of understanding, inept handling of important affairs, and an attitude of disrespect on the part of the officials of the foreign country to which a minister or ambassador is accredited.

In defense of such a lack of professionalism, it is alleged by certain Washington officials that a fresh point of view is very valuable in im-

**In Defense
of the
System**

portant posts. These apologists insist that the career men develop certain prejudices and set ways that make it difficult for them to cut across red tape and accomplish far-reaching results. A successful industrial manager may know how, they say, to surmount all obstacles and arrive at his objective. It is probable that there is a certain amount of truth in these assertions, but they lose sight of the fact that the Foreign Office officials and the fellow diplomats with whom a minister or ambassador must work are ordi-

narly governed by a code of etiquette which makes the business manager seem ridiculous. The mere fact that straightforward tactics work wonders in American business relations does not mean that the same methods will achieve substantial results in the diplomatic field. Nevertheless, it must be admitted that some of these inexperienced representatives of the United States have done well.¹ Furthermore, as long as the top pay for these posts is \$17,500 per year and the expenses of such places as London run to several times that amount, there is some reason for choosing men of affairs rather than career men.² Nevertheless, the effect on the morale of the career men is not the best imaginable.

The current situation is not so bad as it might be, although it leaves a good deal to be desired. There has grown up a custom of appointing ambassadors and ministers out of the higher ranks of the career men. At times 75 or 80 per cent have been chosen from this group; again the proportion will sink to 50 or 60 per cent. But at any time during recent years a fairly large number of heads of missions have been former career men. Unfortunately, it is necessary for a career officer to resign from the Foreign Service when he accepts appointment as ambassador or minister. Inasmuch as the tenure of such places is at best uncertain, there is always a reluctance on the part of a career man to give up his security. Yet it should be noted that some holders of the ranking positions manage to survive over long periods. Hugh Gibson, after some years as a secretary in Honduras, England, Cuba, France, and Belgium held the position of ambassador or minister to Poland, Switzerland, and Brazil; Nelson Johnson served for ten years or so as head of the mission in China and was then sent to represent the United States in Australia; Joseph C. Grew, perhaps the dean of the American ambassadors and ministers now in service, handled the difficult embassy at Tokyo for almost a decade before the outbreak of war and prior to that represented the United States in Denmark, Switzerland, and Turkey.

Ambassadors, it may be noted, differ from ministers primarily in rank. They represent the United States at the more important capitals of the world or the capitals of less importance, as in Latin America, in which the United States is especially interested. Ambassadors receive salaries of \$17,500 per

The Current Situation

Ambassadors Distinguished from Ministers

¹ This is particularly the case among those stationed in London and Paris.

² Ambassadors to the Court of St. James's ordinarily spend \$50,000 to \$75,000 per year. C. G. Dawes reported \$75,000; John W. Davis \$50,000 to \$60,000.

year and take precedence over ministers at state functions. Ministers perform substantially the same functions as their ambassadorial colleagues, but they are paid \$10,000 and \$12,000 per year, depending upon their post.

At present there are approximately 850 strictly career men in the Foreign Service. These are assisted by more than three thousand clerks, typists, doormen, janitors, messengers, interpreters, and other functionaries, many of whom are nationals of the countries in which the career men are stationed. Beginners in the career service are grouped together into an unclassified category and above them there are seven classes. Since the diplomatic and consular functions are now both placed under the Foreign Service, the career officials carry double titles; thus a single person may hold rank as second secretary of legation and consul, third secretary of legation and vice-consul, first secretary of embassy and consul general. Usually, this does not mean that a single person will serve in both capacities at the same time, but it does indicate something of the flexibility which permits men to be shifted back and forth from one type of work to another.

Since 1924 there has been only one way to enter the Foreign Service of the United States and that is by competitive examination. These examinations, which include both written and oral sections, are scheduled once each year¹ and are open only to those citizens between the ages of twenty-one and thirty-five who have made acceptable application to the Department of State for such a privilege.

The written part is set for September, requires two days, and covers four general and four special fields. Among the four general examinations, which are given an aggregate weighting of 16 out of a total of 40 points, are the following: a two-hour test to reveal the candidate's powers of observation and his ability to correlate facts and draw tenable conclusions therefrom; a one-hour exercise designed to ascertain the candidate's skill in interpreting statistical tables, graphs, and so forth;² a two-hour general information quiz which in 1939 included questions on English literature and vocabulary, geography, economics, linguistics, history, law, and government; and a three-hour period during which the candidate is asked to:

¹ No examination was given in 1933, 1934, and 1935.

² Prior to 1939 a more specialized knowledge of mathematics was required.

(a) write a summary in 200 words of a 1,200 word article, (b) prepare a report of from 400 to 600 words on a current topic on the basis of facts furnished, (c) draft a letter of from 150 to 250 words intended to deal with a difficult situation, and (d) write an impartial report of about 150 words based on conflicting reports and relating to a controversial incident arising out of the conflict of laws.¹

The four special examinations, assigned a weight of 24 points, are as follows: a one and one-half hour test on one foreign language or a three-hour test on two foreign languages selected from French, Spanish, or German; a three-hour session on commercial, maritime, and international law and international relations; a three-hour quiz on history and government; and a three-hour test on economics. The last three examinations are drafted in such a manner that the candidate is permitted some option and in the main require the writing of essays.

A total numerical mark of 70 or higher is required on the written test for eligibility to the oral section. Some idea of the difficulty of the written examination is to be derived from statistics of the one given in September, 1939—which it may be added had a lower mortality rate than several preceding. In this year 512 persons were admitted to the competition and 101 received a grade of seventy or higher.²

The oral phase of the examination, usually given in the month of January, requires the presence of the candidate in Washington. Inasmuch as Foreign Service examinations are not exclusively administered by the Civil Service Commission, as are other federal examinations, it should perhaps be pointed out that a board of seven members, which includes the three assistant secretaries of state, the Chief of the Division of Foreign Service Personnel, the chief examiner of the Civil Service Commission, and one representative each from the Department of Commerce and the Department of Agriculture, gives these examinations. The chief purpose of this part of the system is not to ascertain the general intelligence, range of information, or specialized knowledge of the candidate, for that has been done in the written section. A few questions may be put dealing with current affairs, but the primary objective is that of rating the candidate on personal qualities and particularly on probable suitability for the Foreign Service. The standards set vary from year to year, for the general practice has been to determine the probable number of vacancies

¹ This type of examination was given first in 1939.

² See the *American Foreign Service Journal* for June, 1940.

to be filled and then pass only that number of candidates. During recent years as few as ten have been finally passed, although in 1940 the number ran to thirty-five.¹

A grade of 80 on the combined written and oral examinations is specified—it may be added that since the revised examination procedure became effective in 1932 no candidate has received a grade as high as 90 on the written section; in 1939 only 2 per cent rated as high as 80. In the oral examinations there is a distinct policy to hold up those persons who are more than thirty years of age, although the law sets a ceiling of thirty-five years. Candidates receiving a total grade of 80 or better are subjected to a fairly rigid physical examination and, if they pass that hurdle, may ordinarily expect appointment within anywhere from three or four weeks to eight or ten months or more.²

Those who receive appointments to the Foreign Service are ordinarily given a period of approximately two years of training before assignment to regular duty. To start out, it is a common practice to send them to some large consulate or diplomatic office—Mexico City, Montreal, and Ottawa seem to be popular for this purpose—where they may observe what goes on and be coached by an experienced staff of Foreign Service officers. The second year is spent in the Department of State, and here they have an opportunity to hear lectures delivered by various officials and to see what is done at the Washington end in conducting foreign relations. After this second year they are assigned, as a rule, to some fairly sizable consulate as a vice-consul or to a legation as a third secretary.

There is a widespread misapprehension that promotion in the Foreign Service depends in large measure on private means, social poise, and political pull. In an interview, published in 1939, Mr. G. Howland Shaw, Chief of the Division of Foreign Service Personnel of the Department of State, categorically denied that Foreign Service officers must have independent wealth, declaring, "It is more likely that his parents (Foreign Service officer's) are people of moderate means, or even poor, than wealthy. The majority of Foreign Service officers have no other incomes than their salaries and post allowances."³ That is not to say that private means may not be convenient at times, but the common assumption that they are absolutely

¹ See the *American Foreign Service Journal* for June, 1940.

² The war situation has made it difficult to absorb recent successful candidates. There is some question whether examinations will be given at all in 1942.

³ See the *American Foreign Service Journal* for October, 1939.

essential is not founded on fact. Social grace is, of course, not a liability in the foreign service, provided it is supplemented by intellectual vigor and reasonably faithful attention to duty. However, the prevalent idea that Foreign Service officers spend their time largely at tea parties, flirtations, and playing polo is at the very least an exaggeration. It is true that some of those who enter the service have such interests, but most of them drop by the wayside before many years have passed.¹ How much assistance may be rendered by influential political connections it is difficult to determine. Albert Bushnell Hart once told the young men at Harvard who were looking toward the Foreign Service that, while they could not depend upon pull and influence to get into the Service or to stay there, still it would be very helpful in securing promotion if they had interested friends in the Senate. In general, promotions are based upon inspection ratings and length of service, but it is probably not harmful to have friendly Senators expressing an interest.

It is not easy to make a list of the duties of Foreign Service officers attached to legations or embassies of the United States. Much depends upon the particular job which they hold; for example, the work of a first secretary is quite different from that of a third secretary. More than that, a great deal depends upon the post to which an officer is assigned; a second secretary in Lima, for example, may perform functions which are not required of a second secretary in London or Buenos Aires. Furthermore, the time element enters in, for during periods of world conflict duties may be more arduous and of a different character from those carried on during normal times. Finally, a great deal depends upon the individual Foreign Service officer, especially in the higher grades of the service. There are certain routine duties which must necessarily be performed, but beyond those the senior members of the Foreign Service have considerable leeway. They may spend a great deal of their time going through foreign government reports, reading the vernacular press, and in other ways collecting data for the preparation of elaborate reports on political, economic, and even social conditions in the country to which they are assigned. Or they may concentrate their attention on the cultivation of important government officials, professional men, business executives, and other leaders of the foreign capital.

**Diplomatic
Functions
of Foreign
Service
Officers**

¹ At least this is the observation made by a well-established and quite successful Foreign Service officer to the author.

As representatives of the United States the Foreign Service officers handle American relations with the governments of the countries in which they are stationed. They may have contact with executive, administrative, or legislative officials of the governments, but their primary relations will be with the Foreign Office. To this office they deliver communications from the Department of State in Washington; with this office they discuss the desires and complaints of the United States and its citizens; and from this office they receive messages for transmission to the Department of State. Much of this work may be of a routine character, but during times of international crisis great importance may be attached to it. If a treaty is being negotiated through regular channels rather than by a special mission, the work of the Foreign Service officers may be especially demanding. If an international conference, such as that held in 1936 in Buenos Aires, takes place in the capital where they are stationed, there will be many additional duties. In addition to the formal contacts with their respective foreign offices, Foreign Service men are always expected to be looking around for information which may be valuable to the Department of State as a basis for its dealing with a foreign country. Consequently numerous reports by wireless telephone, cable, or radio are made on current happenings, while more elaborate written reports are sent by diplomatic pouch.¹

The social obligations may be quite burdensome or they may be relatively simple. In certain capitals of the world, Paris during the old days, London and Rome at times, social life among the diplomatic circle has been a hectic and complicated affair. Almost every day brought invitations to dinner, receptions, cocktail parties, and a hundred and one other social affairs. Even if many of these are not accepted, life may become one round of dinners, receptions, and parties which consume the greater part of every day and last until long after midnight.² State functions and the formal affairs

¹ The diplomatic and consular officers of some countries such as Germany and Russia have from time to time carried on quite extensive espionage activities. While Congress makes no considerable appropriations for such work by the American Foreign Service, still during times of international disturbance consulates and legations probably serve as focal points for secret agents as well as for military and naval attachés. Indications that this was true in the critical years during the World War I are to be found, and it is quite possible that it is also true in World War II. However, there is little or no American activity of this nature in relatively peaceful times, nor even during war has it ever been on as large a scale as that of Germany or Russia.

² In the prewar period the American ambassador to Rome might dine at home once a month.

of fellow-diplomats ordinarily require attendance even on the part of those who are not socially inclined. Even in Berlin where the social pitch probably attained less intensity during the early 1930's than in certain other capitals, Ambassador Dodd found the long-drawn-out dinners and receptions which he felt obligated to attend very trying.¹

In those capitals where American tourists and business men abound during normal times Foreign Service officers may have to give a considerable amount of energy to their entertainment and assistance. It is traditional that resident Americans be entertained at the legation or embassy on July the Fourth. Many American diplomatic stations also give entertainments at Thanksgiving and Christmas. Congressmen of the United States on junket always expect to be dined and wined by the legations and embassies of the United States, while many men of wealth or eminence in other walks of life also are insulted if they receive no attention. Ambitious mothers have long schemed to have the American ambassador in London present their daughters to the English king and queen. American business representatives abroad frequently find that they need the assistance of legation or embassy officials in securing special privileges or ironing out difficulties with the foreign government.

Miscellaneous
Diplomatic
Duties

The Foreign Service officers who are attached to consulates of the United States have varied duties also, although they may not have quite the leeway which their diplomatic colleagues enjoy. A great deal depends upon where they are stationed. If the consulate is attached to a legation or an embassy or located in the same city, social obligations may be greater than they would be otherwise. Consulates located in large cities, such as Shanghai, Montreal, São Paulo, or Bombay, find themselves in the social picture to a far greater extent than those situated in Antofagasta, Port Said, or Santos. In general, Foreign Service officers assigned as consular officials deal with commercial matters more than their colleagues in the diplomatic side. But even commercial responsibilities depend in large measure upon the particular consulate—where much trade is carried on with the United States the work will be far heavier than in cities of the same

Consular
Functions

¹ See Martha Dodd, *Through Embassy Eyes*, Harcourt, Brace and Company, New York, 1939, and W. E. Dodd and Martha Dodd, *Ambassador Dodd's Diary*, Harcourt, Brace and Company, New York, 1941.

size where little or no such trade originates or ends. Thus, the Singapore consulate during normal times was quite busy because of the tin and rubber shipments from Malaya to the United States and because of the large number of American vessels which called at that port, while the Kobe and Yokohama offices were likewise hard worked because of Japan's silk trade with the United States. On the other hand, American consuls in such places as Nanking, Vienna, and Stalingrad have far less to occupy their energies.

Where there is important exportation to the United States, consular officials have a good deal of routine work in connection with certifying invoices. If vessels flying the flag of the United States call in large numbers, there will be many duties in connection with the signing on of sailors, the sending home of stranded seamen,¹ disputes between master and crew, securing ship's stores, and clearances. If American missionaries or business men in large numbers are resident in a foreign city, there will probably be numerous duties relating to their passports, marriages, births, deaths, estates, rights, property holdings, taxes both American and foreign, and a multitude of other matters. In those countries where large numbers of persons wish to migrate to the United States, consuls may be faced with innumerable responsibilities relating to visas, although new regulations put in force in 1941 relieved consuls outside of the Western Hemisphere of their authority to grant such permits.² One of the most important functions of Foreign Service officers assigned to consular duty is that of reporting on business opportunities in the areas which they cover. As pointed out before, in 1939 the President transferred the foreign agents of the Commerce and Agriculture departments to the Foreign Service and thus added to the responsibilities relating to the making of reports on industrial, agricultural, and other commercial matters. American business concerns have the privilege of asking whether or not their products would find a market in a foreign country. In addition to gathering such information, consular officials prepare general reports on business conditions in foreign countries.³

¹ While Congress appropriates funds for sending home sailors who are stranded because of illness, and so forth, other citizens must rely on private funds. American business men in Shanghai, for instance, make regular contributions out of which in extreme cases passage for insolvent Americans is paid.

² See the *New York Times*, June 23, 1941, for the text of the new regulations. Under the new regulations decisions have to be made in Washington.

³ These are compiled by the Department of Commerce and published reports are regularly issued.

With a considerable variation among the several hundred Foreign Service officers as to competence, industry, and intelligence, it is not easy to draw general conclusions. No one can doubt the substantial progress which has been made since the Rogers Act placed the service on a career basis in 1924. Before that time there were numerous examples of able diplomatic and consular officials, but the over-all standards were low and the reputation of the United States in the field left a great deal to be desired. At the present time it seems unfortunate that ambassadors and ministers are placed above rather than at the top of the career service. For many years very inadequate provision was made for housing consulates, legations, and embassies and particularly their staffs. Despite the expenditure of some millions of dollars in acquiring suitable quarters, there is still much to be done.¹ Salaries compare favorably with those paid by other countries, but allowances for entertainment and related items are usually far below what they should be and cause many problems which produce irritation and embarrassment. The educational background of the Foreign Service officers is very good, at least as far as formal education is concerned; moreover, many of them are highly expert in their knowledge of international politics.

**A General
Evaluation
of the For-
eign Serv-
ice**

The policy of the State Department has been to transfer the personnel at frequent intervals—ordinarily at least once every three years—and this has prevented detailed specialization in the majority of cases. In China and Japan many of the Foreign Service officers of the United States are permanently assigned to those countries and have acquired an impressive knowledge of the language, the institutions, and the people, but in the remainder of the service shifts from one side of the world to another are always in order. An officer may be assigned to Turkey, Portugal, Panama, Russia, and Canada in succession, in no case residing in a single country for longer than three years. As a result, he only becomes tolerably proficient in Turkish language and history when he has to start all over again in Portugal with a different language and set of customs. After several experiences of this kind he either becomes highly adaptable or falls by the wayside. In any case he is not likely to be too proficient in dealing with the officials of the country to which he has been transferred—at least for a year or so. The spectacle of first secretaries

**Lack of
Specializa-
tion**

¹ Large sums have been spent acquiring property in Ottawa, Berlin, Paris, and other capitals.

and consul generals who cannot even make a telephone call, to say nothing of conversing with the foreign office staff without an interpreter, is not edifying.

Finally, there is the matter of Foreign Service psychology. Ambassador Dodd apparently spent a good deal of his energy in beating off **Psychol-ogy** the biases of his staff in Berlin. They wanted him to travel by special train or at least by private car—not in his own Chevrolet; they could not see why he felt it necessary to be in his office at nine o'clock in the morning rather than coming leisurely in at noon; they resented his lack of admiration and sympathy for the program and accomplishments of National Socialism.¹ Nor were most of them able to adjust to his ways, with the consequent necessity of their transfer to another post. The most serious weakness in the Foreign Service is probably a narrow attitude which places undue emphasis upon protocol and which views anything unconventional, however unimportant, as shocking. To a considerable extent this is probably due to the training which they receive in the service and the environment in which they pass their days, but it may also be attributed in part to the selection policy of the Service.

Of the 153 successful Foreign Service candidates during the years 1932 to 1940, 29 were drawn from New York, 15 from California, 12 from Massachusetts, and 10 from Pennsylvania, while 8 **Back-ground of Foreign Service Officers** states did not contribute a single recruit, and Wisconsin, Indiana, Nebraska, and several other states could claim only 1. This may not be out of order, but it perhaps adds to the conclusion to be drawn from the educational background of the personnel. As of 1940, 93 of the 850 Foreign Service officers came from Harvard, 62 from Yale, and 56 from Princeton; approximately one-half were drawn from 12 universities, 8 of which were located in the East, 2 in the far West, 1 in the Middlewest, and 1 in the South.² On the other hand, only one lone officer had been educated in the more than thirty institutions of higher education in Indiana—and that through no lack of interest on the part of the students of those universities. The British Foreign Service, which has perhaps had the best reputation in the world, has been criticized severely because it has drawn its personnel from too narrow a social stratum, with Oxford

¹ See Martha Dodd, *op. cit.*

² To be exact, 407 out of 850. Taken from the *American Foreign Service Journal* for June, 1940.

and Cambridge men enjoying great advantage.¹ In view of the educational record noted above, one wonders whether the same narrowness has not in some instances characterized the Foreign Service of the United States, with resulting conservatism, false values, and lack of appreciation of democratic government.

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¹ The British took official cognizance of this situation in 1941 when Anthony Eden, the Foreign Secretary, announced a new system of recruitment under which opportunities would be given to other classes of the population. See the files of the *New York Times* for June, 1941, for additional details.

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CHAPTER XXXV

NATIONAL DEFENSE

THE delegates who met in Philadelphia in 1787 to consider the strengthening of the government of the Confederation gave generous attention to the matter of national defense. Independence from England had recently been won and that emphasized the importance of national defense. Moreover, there was the problem of coping with the Indian tribes of the West. The very future of the country in a world which even then was not too considerate of small and unprotected nations depended in no small measure upon the adequacy of the defense preparations. So though the regulation of commerce received a single clause of the Constitution and credit facilities came in for no attention at all, the framers took pains to include nine different provisions which dealt with national defense. It required little argument to show that the individual states were in no position to deal effectively with this matter and consequently this particular area was placed more or less exclusively in the hands of the national government. Furthermore, in order that every opportunity might be given, the hands of the latter government were left relatively unfettered in dealing with the problem.

As commander-in-chief of the armed forces and as the recipient of power entrusted by Congress under the Constitution the President has far-reaching authority in matters relating to national defense. He may order the regular Army and Navy to take action which he regards as wise, though this may involve the United States in war. Even if Congress has the purse in hand, the President may virtually compel the disbursement of large sums for military purposes. Theodore Roosevelt had a long ambition of sending the Navy around the world, but Congress refused to appropriate the necessary money; whereupon the President ordered the Navy to the Philippines and then informed Congress that funds were required to get the Navy home. Obviously the money was given. In so far as labor interferes with the defense program, the chief executive may take over control by sending in the soldiers, as he did in the North American Aviation plant in California. If management refuses

Scope of
the
National
Defense
Powers

to cooperate in national defense plans, the President may also occupy property, as he did in the Bendix Air Associates in New Jersey. The transportation facilities of the country may be taken over by the President on the plea that the military forces and supplies have to be moved.¹ Transactions in foreign exchange may be prohibited and assets of foreign countries in the United States may be frozen. Radio stations may be refused the air; a system of censorship may be established; national securities exchanges may be closed for ninety days; the eight-hour day can be abandoned in favor of a longer day in plants where government contracts are being manufactured. These are but a few of the steps which may be taken if the welfare of the country during a period of national emergency demands. That is not to say that they will necessarily be taken; even after war was declared against Japan, Germany, and Italy some of these powers were not at once exercised. But the President may go far in dealing with a situation if he deems it prudent and necessary to do so. These powers, it may be added, are not in every case powers which are produced by war, though some of them would rarely if ever be used unless war threatened. The national defense powers of the United States may not be as extensive as those of Hitler—certainly they are used with greater discretion—but they are nevertheless far-reaching.²

Despite the attention given to national defense by the Constitution, the United States has in general not actually devoted any large part of its energy to military activities. The early years of the republic saw reasonably vigorous efforts to cope with some of the warlike Indian tribes. In 1812-1815 there came the second war with England; while during the years 1846-1848 the United States carried on military operations against Mexico. In 1861 there began four years of the bloodiest war which the United States has ever engaged in and which left its mark on some sections of the country for more than half a century after hostilities had ceased. At the close of the century a brief war with Spain ended with the insular possessions of the Philippines and Puerto Rico in our hands. Then came World War I in 1917, which required the expenditure of great sums of money but did not involve the loss of large numbers of our men. And finally, there came World War II. The recital of these

**The
Defense
Record
of the
United
States**

¹ This was done in World War I.

² In December, 1941, after the outbreak of war Congress conferred on the President broad wartime powers even exceeding those granted to Woodrow Wilson in World War I. These were supplemented by a second War Powers Act passed in 1942.

wars within a space of a century and a half does not perhaps uphold the statement that the United States has not given undue attention to warlike activities; certainly it is difficult to display any pride in such incidents as the Mexican and Spanish-American Wars. And it must be admitted that this apparently bad record is all too familiar to our Latin-American neighbors who have at times been victims and, irrespective of that, are inclined to regard us as ruthless and imperialistic.

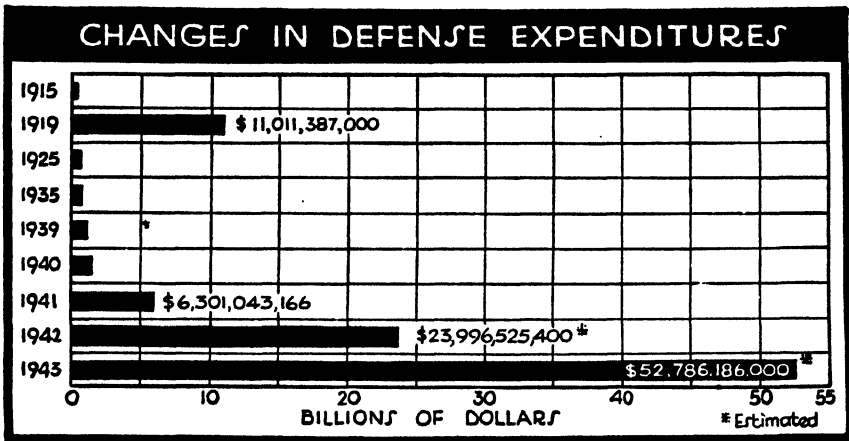


FIG. 11. Prepared by the *New York Times*.

But over against these historical events may be placed the general antipathy for military dominance. Except when there has actually been a state of war, the civil departments have invariably received far more consideration than the military, despite the bitter complaints of the latter. Even the War and Navy Departments have been headed by civilians rather than Army and Naval officers. Military training has been generally distasteful and except during World Wars I and II has never been of compulsory character. Military preparations have, with rare exceptions, been regarded as necessary evils, not something to be glorified; perhaps in no other country of major importance has it been possible to travel into every nook and cranny without interference by the military and indeed without even so much as seeing military forces and activities. Anyone who has traveled in Japan, Italy, Germany, Peru, Turkey, Yugoslavia, or many other countries of the world will know what a contrast the American scene presented. In those countries one could rarely ever escape the watchful eye of the military; military reviews lasting all day were com-

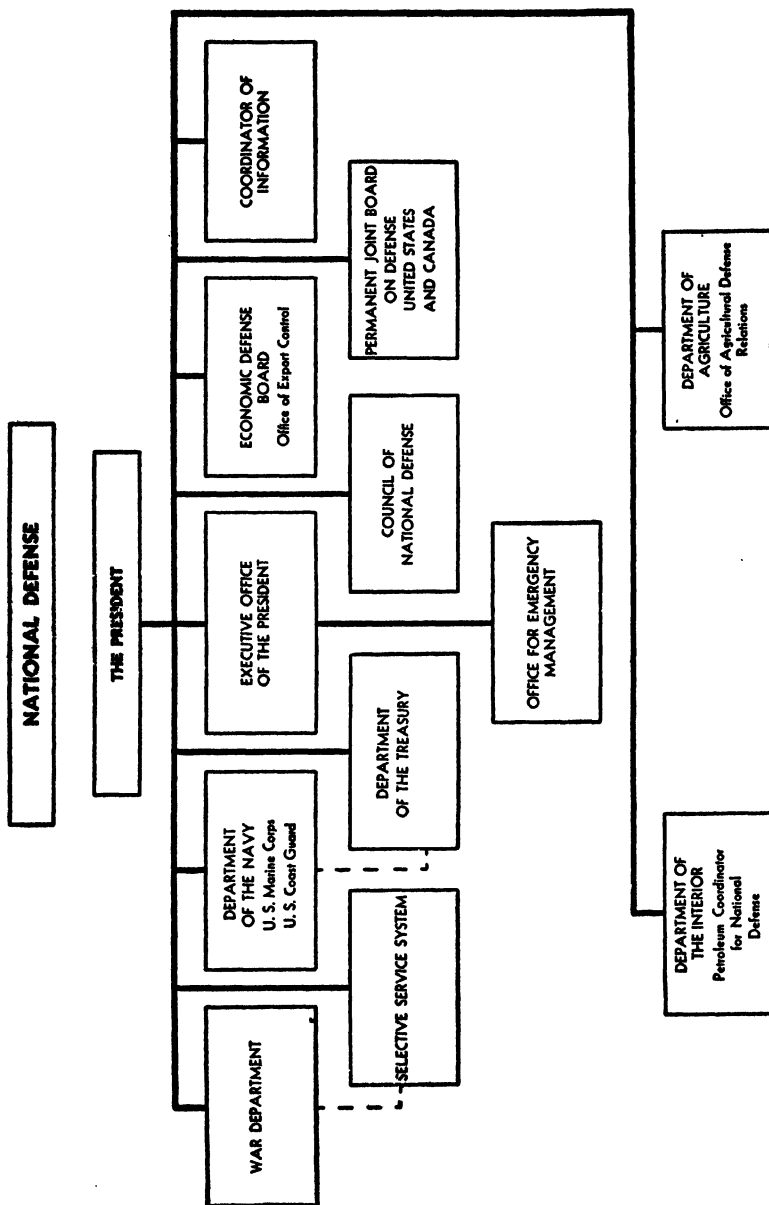


FIG. 12. A chart showing the National Defense Organization as the United States entered World War II. The War Production Board, Office of Price Administration, and Office of Civilian Defense which are not shown are located in the Office for Emergency Management. Reproduced from the *United States Government Manual*.

monplace; military police thronged the places where people assembled and accompanied those who traveled on the trains; signs warning the visitor not to proceed further or to take photographs were almost everywhere in countries like Japan.

THE ARMY

The United States has long maintained a standing army of professional character under the constitutional authorization "to raise and support armies, but no appropriation of money to that use shall be for a longer time than two years."¹ However, this army except in war time has ordinarily been small when compared with the professional armies of even some of the smaller countries of the world. At a time when European countries thought nothing of regular armies of hundreds of thousands of men and officers the United States felt that a standing army of approximately one hundred thousand was adequate not only for the continental United States but to protect the Panama Canal, the Hawaiian Islands, and the Philippines. Immediately prior to the beginning of hostilities in Europe in 1939 the total strength of the men and officers of the professional Army of the United States amounted to about one hundred and fifty thousand. As the Nazi menace became more and more apparent and the longtime friends of the United States, such as France, Holland, Belgium, Norway, Czechoslovakia, and Poland, became victims of Hitler aggression, the regular Army was gradually increased by voluntary enlistment. In the fall of 1941, prior to the entry of the United States into the war, it consisted of 505,000 men and about 15,000 officers. An additional 16,000 regular Army reserves and 74,000 reserve officers were in active service at that time.² These men were stationed mainly in the continental United States, though the overseas garrisons had been increased from 45,300 to something like 125,000.

No other army in the world treats its men and officers so generously as that of the United States. The lowest private has for some time received not less than \$21³ per month plus subsistence, while in other well-to-do countries the corresponding figure is sometimes less than the equivalent of \$1.00. The rations of the American Army have long been the envy of enlisted

**The
Regular
Army**

**Member-
ship in the
Regular
Army**

¹ Art. I, sec. 8.

² Statement of the Secretary of War as reported in the *New York Times*, October 2, 1941. An Army of 1,800,000 had been authorized before Japan declared war on December 7, 1941.

³ A bill to increase the base pay to \$42 passed the Senate early in 1942 and seemed likely to become law.

men the world over. Entrance into this service is always on a volunteer basis and frequently permits an enlisted man to choose where he will serve—Hawaii or Panama Canal Zone, for example, may be offered. Yet despite the compensation and food, Army service, even for officers, has carried with it little of the prestige that foreign countries have offered. Ambitious young men in the United States have usually chosen business or a profession, giving little thought to a professional Army career.¹

While professional military service has failed to attract large numbers of young men, considerable interest has been manifested in Reserve Officers serve commissions during recent years. College students have become members of R.O.T.C. units and after supplementary summer training have received Reserve commissions as second lieutenants. Many others have attended C.M.T.C. camps and some of these have gone on to Reserve commissions. Entrance to the Quartermaster, Intelligence, and other services has been opened to those who would carry on a correspondence course and pass certain examinations. Especial emphasis has been placed on maintaining an adequate supply of reserve officers since the end of World War I, for in that conflict the United States was badly handicapped in building up an army by lack of trained officers. As pointed out above, there were late in 1941 almost seventy-five thousand reserve officers. In ordinary times these men follow the professions or are engaged in business activities, but when the need arises they may be called into active service by the War Department.

In order to give the states some place in the defense program it has long been the practice to supplement the Regular Army with National Guard units scattered throughout the forty-eight states. Every male citizen between the ages of eighteen and forty-five years is technically a member of the national militia, but only a comparatively small proportion of these millions have been organized into National Guards. The states provide armories, appoint officers, maintain adjutant generals for general supervision, and have the control during peace times. However, the expenses are borne in large part

¹ The United States Military Academy at West Point and the United States Naval Academy at Annapolis have long enjoyed prestige and may be regarded as exceptions to this general rule. Yet military men themselves have sometimes had little enthusiasm even for such careers. In his *Fighting Years*, Harcourt, Brace and Company, New York, 1939, p. 64, Oswald Garrison Villard relates that he asked General Sherman about going to West Point. The latter replied: "Under no circumstances. It's not a career for anyone."

by the national government, which in return asks the right to specify equipment and determine training. When the occasion demands, the President of the United States may call the National Guard out for active service and the control on the part of the states then gives way for the time being. There were 245,000 National Guardsmen in the fall of 1941.

The international situation became so tense in 1940 that President Roosevelt called upon Congress to pass legislation which would require compulsory military service on the part of large numbers of young men. The tradition of freedom from that sort of service made Congress reluctant to pass the necessary legislation, but the exigencies of the situation did not permit any other course. All male citizens between the ages of twenty-one and thirty-five years were called upon to register in the fall of 1940. After the entry of the United States into the war, the Selective Service Act was amended to include all males between the ages of eighteen and sixty-four, inclusive, with those of twenty to forty-four, inclusive, subject to active military service.¹ Master numbers drawn by lot in Washington determined the order in which these men would be called up. Local selective service boards were set up on county levels in rural areas and on districts within large cities for the purpose of supervising the system and determining cases of deferment. As numbers are reached, the men are called before the boards and classified. Those who have dependents are placed in a deferred category as are those who are physically or mentally unfit for service. Original provisions called for one year of this training, but Congress later authorized an extension to two and one-half years in case the President and War Department regarded it as essential, even though no state of war existed; with the declaration of war the service of the selectees is indefinite. In the fall of 1941, 705,000 selective service trainees were in the armed forces.² The Army hoped to add approximately two hundred thousand per month to this number beginning early in 1942.

During wartime the Regular Army, the National Guard, and the selective service men together form what is known as the National Army of the United States. This necessarily varies in size, depending upon the exigencies of the particular time and the

¹ The Bureau of the Census estimated 25,829,788 men to be affected by the twenty to forty-four provision and 42,001,041 by the eighteen to sixty-four provision.

² Report of the Secretary of War as reported in the *New York Times*, October 2, 1941.

exact stage which has been reached in transferring from a peacetime to a wartime footing. After the entry of the United States into World War II the War Department naturally bent every effort to build a large and powerful National Army, though it refused to commit itself to definite numbers. However, early in 1942 a force of some 3,600,000 men seemed to be the goal for the time being.¹

The President is commander-in-chief of the Army in a legal sense, but he does not ordinarily actively exercise his prerogative. To begin with, he is rarely a professional soldier; ² furthermore, he has too many other burdens to be able to give his detailed attention to the Army. The Secretary of War, like the President, does not have a military background as a rule, and is somewhat more of a liaison man between the Army and the President and Congress than its head. The general staff, which is part of the War Department, has the direct oversight of the Army and its head, the Chief of the General Staff, is at present the ranking military officer in the United States.

Prior to March, 1942, the Army had for many years been based on a plan of organization which made the infantry, cavalry, field artillery, and coast artillery the basic units with an air force added as a sort of an appendage. The spectacular *panzer* operations of the Germans and Japanese and the fearful striking power of the Axis air forces in Europe and the Far East clearly demonstrated the necessity of a drastic reorganization of the Army of the United States. Consequently the President acting under the First War Powers Act of 1941 and as commander-in-chief of the Armed Forces issued an executive order on March 2, 1942, which had been carefully drafted by a group of military and public administration experts. This order which carried a clause limiting its effectiveness to six months after the end of the war impressed many students of government as one of the most far-reaching ever issued by a chief executive; despite its time limit it is probable that the streamlining provided will prove permanent.

Abolishing, consolidating, and integrating numerous existing bu-

¹ On January 15, 1942, Secretary of War Stimson issued a statement in which a total of 3,600,000 men was set as a goal by the end of 1942. Plans for further expansion in 1943 were mentioned. As of the above date the National Army numbered some 1,700,000 men. See the *New York Times*, January 16, 1942.

² Presidents Washington, Grant, and perhaps Theodore Roosevelt might be classified as possessing professional military knowledge.

reorganization effected in 1942 provided for three great branches of the Army as follows: a Ground Force, an Air Force, and a Service of Supply. The functions of the chiefs of infantry, cavalry, field artillery, and coast artillery, excepting those relating to procurement and supply, were transferred to a commanding general of the Ground Force. Similarly the duties of the chief of the air corps and of the commanding general of the general headquarters air force were conferred on a commanding general of the Army Air Force. Procurement functions together with supervision over the offices of judge advocate general, provost marshal general, and adjutant general were brought under a commanding general of the Service of Supply. In commenting on this reorganization Secretary of War Stimson stated that it would provide "two great coordinate fighting arms" and relieve these of the "distraction and effort required by supply, procurement, and general housekeeping duties."¹

Even before this streamlining, the Army was supervised by a Chief of Staff and a general staff responsible to the Secretary of War and the President, as pointed out above. However, even the general staff came in for reorganization in connection with the important **The General Staff** changes ordered in 1942. Prior to March, 1942, the general staff had been made up of approximately 500 members drawn from various branches and services of the Army. Though permitting wide representation its size was such that it suffered from unwieldiness. Hence supplementing the executive order of the President, Secretary of War Stimson announced that beginning March 9, 1942, the general staff would consist of 98 members: 60 drawn from the War Plans Division, 19 from the Air Force, and 19 from the Ground Force.

Modern warfare calls for carefully laid plans, though considerable leeway on the part of the commanding officers in the field is usually regarded as wise—at least military analysts credited much of **War Plans Division** the German and Japanese success in 1940-1942 to daring tactical plans brilliantly executed by commanding officers in the field. The report of the Roberts Committee relating to the attack on Pearl Harbor in December, 1941, indicated that it is the practice in the United States to permit commanding officers in high places wide discretion in exercising their duties, holding them responsible for any dereliction of duty. The War Plans Division as reconstituted in 1942 is made up of 20 representatives of the Ground Force, 20 officers drawn

¹ See the *New York Times*, March 3, 1942, for the full statement.

from the Air Force, and 20 specialists from the Supply Service. This division has general responsibility to the Chief of Staff and its members, as pointed out above, have seats on the general staff. This division has charge of drafting plans for the defense of the continental United States and territorial possessions and in 1942 took over from the general headquarters staff the planning of projected operations of the Army of the United States on foreign soils.

THE NAVY

In so far as the United States has given its attention to national defense, it has until recently been the Navy rather than the Army that has received the most consideration. The fact that the United States is separated from other great powers by oceans has quite naturally led to the emphasis upon naval preparedness rather than a large standing Army. Nevertheless, attempts have been made again and again to enter into agreements with the leading naval powers, England, Japan, France, and Italy, looking toward maintaining the *status quo* if not actually reducing naval armaments. In the period immediately following World War I conferences looking to this end were held in Washington and London and agreements were drafted which embodied some measure of limitation.¹ For several years the United States desisted from building new naval craft in large numbers—only 170,000 tons were built during 1920–1933—and even went so far as to abandon work on vessels already under way. However, after the totalitarian powers began their unparalleled aggressions in the 1930's and the naval agreements were not renewed in 1936, all efforts in this direction appeared futile and the United States, along with other nations, started the greatest naval race ever recorded.

The Constitution authorizes Congress to “provide and maintain a navy,”² omitting the qualifying clause noted in the case of the Army that appropriations shall not cover more than a two-year period. Naval construction requires a longer time than most of the projects carried on by the Army and this perhaps explains the

¹ The naval agreement of 1921–1922 established a ratio between the leading navies of the world and limited construction for a period of fifteen years. It provided that the signatories should keep one another informed of their naval construction. This agreement came to an end in 1936 and was not renewed. There were persistent rumors that Japan had not been observing the terms for several years before the agreement expired, though no absolute proof of this was forthcoming.

² Art. I, sec. 8.

unlimited authority given in this field. Prior to 1939 the United States had slightly over 100,000 officers and men in the Navy; by mid-1941 the total had jumped to 249,727; and this number was being added to at the rate of approximately 10,000 per month as new vessels were put into commission.¹ After the declaration of war Congress put a ceiling of 500,000 on naval personnel for the time being. Various types of naval craft are operated by the Navy: first-line battleships, heavy and light cruisers, destroyers, airplane carriers, auxiliary vessels such as hospital ships, supply ships, tenders, tankers, and repair ships, and submarines. At the beginning of 1942 between 300 and 400 warships were listed on the combat register and 358 others were under contract. When the shipbuilding program underway in early 1942 is completed, probably in 1946, there will be 687 combat vessels as follows: 32 battleships; 91 cruisers; 371 destroyers; 18 aircraft carriers; and 185 submarines.* At the top of the fleet register there will be five superships of 58,000 tons each, together with six others ranging from 35,000 to 40,000 tons each.² More than 200 auxiliary vessels, 136 mincraft, 187 patrol vessels, and 72 net and boom ships were in a commissioned status at the beginning of 1942 and some 600 others were being built or converted. The executive order of the President issued in November, 1941, placed the approximately one hundred vessels of the Coast Guard under the Navy, consequently adding some seven vessels of the destroyer type along with numerous cutters and patrol boats and some twenty thousand officers and men.³ These numbers will probably be supplemented as the war progresses; indeed Congress authorized an additional 150,000 tons almost immediately after the declaration of war.⁴

For some years prior to 1940 the United States maintained the greater part of its Navy in the Pacific. As the Japanese became more and more anxious to expand in the Far East, almost all of the strength of the Navy was transferred to the Pacific and based on the Hawaiian

¹ From January 1, 1940, to October 31, 1940, the navy commissioned 25 combat ships, launched 34, and laid the keels of 115.

² These numbers make no allowances for losses occasioned by enemy action.

³ This order was issued on the night of November 2, 1941. It places the Coast Guard under the Navy for the duration of the national emergency, following a precedent established during World War I.

⁴ This would be the equivalent of some twenty-four cruisers and destroyers, it is estimated. See the *New York Times*, December 18, 1941. A larger proposal was rejected because all existing shipbuilding facilities were taxed to capacity for several years ahead by the naval program previously authorized.

Islands, apparently under an agreement that England would assume the task of protecting American interests in the Atlantic. As England became involved in a struggle for her very existence, it became necessary to bring a part of the American Navy back into the Atlantic, despite the critical state of affairs in the Pacific area. The United States consequently had to face the problem of a two-ocean Navy which, of course, added greatly to the complications. Congress was called upon to appropriate large sums for a vast expansion of naval facilities, and shipbuilding and naval yards which had been quiet for years began to be taxed to capacity. Despite the scarcity of certain materials and the attempts of some groups of organized labor to take advantage of the emergency to secure wage increases, the program has progressed rapidly, indeed in some instances vessels have been completed several months ahead of schedule. Nevertheless, the Japanese "Blitz" in the Pacific saw the two-ocean Navy still far from completion.

One of the branches of the military services of the United States is well known to virtually every citizen. The Marine Corps, which expanded from 26,454 in 1940 to 51,203 officers and men in 1941, and was given a wartime strength of 104,000 shortly after the declaration of war, has been publicized by the moving pictures, popular fiction, and the press until it ranks along with the old French Foreign Legion on the score of daring and romance. Perhaps the very color and cut of its dress uniforms has done much to entrench it in popular imagination. But this corps is far more than a moving-picture creation, for it has a long record of effective service behind it. Organized as a branch of the Navy its members might be designated the amphibians of the armed forces, since they are trained to function both on land and on sea. In cases of emergency the Navy rushes to the spot and if land action is required the Marines are landed to handle the situation.

CURRENT MILITARY PROBLEMS

Though the streamlining of the Army and the recognition of the primary importance of the air arm deserve distinct praise, they did not accomplish what some military analysts regarded as the most crying need—a unified command. The report of the Roberts Committee shocked the people of the United States almost as much as the attack on Pearl Harbor itself, for it indicated beyond a doubt that there had

been a lack of collaboration on the part of the Army and the Navy in Hawaii. The President as commander-in-chief of the Armed Forces of the United States is legally charged with unifying the various defense efforts, but, as Hanson W. Baldwin, military expert of the *New York Times* pointed out early in 1942, he "has neither the time nor the capacity to plan and direct the strategy of this war," adding "that the Army and Navy under the present system have not achieved a coordinated and effective plan is shown by the results achieved."¹ One member of Congress introduced a bill providing for the consolidation of the Army and the Navy into a single department, but most observers preferred a super-general staff headed by a single military chief.

The Problem of a Unified Command

Ever since the end of World War I there has been discussion as to whether the United States should establish a separate department for aerial warfare. There has long been the recognition of the dividing line between the Army and the Navy, but the Air arm has been divided between these two well-established services, rather than set up as an independent department of its own. Considering the role which aviation now plays in warfare, it is argued that the time has come for full recognition of the status of the Air Service. Such an authority as H. F. Guggenheim issued a public statement late in 1941 in which he asserted that the United States would never be a first-rate power in the air until it established a separate Air Department.² England has long followed such a course, while other governments sometimes organize aerial warfare into a separate agency and at other times divide the Air forces between the Army and Navy. Opponents of separate status for the Air forces are equally certain that the right is on their side and produce many arguments in favor of their stand. Recently they have attributed most of the faults of the English military system to the fact that the air defenses are not coordinated with the land and sea forces. Admitting the bravery and skill of the R.A.F., these critics maintain that the separate command has made it difficult if not impossible to use the air forces to the best advantage, alleging that the army received scanty assistance from the air in Crete, for example, and that after the army had been evacuated to Egypt feeling ran so high against the R.A.F. that it was necessary to keep the members of that force away from public places.

Separate Air Department?

¹ See the *New York Times*, March 15, 1942.

² As reported in the *New York Times*, November 14, 1941.

Despite the attention which the United States has given to good health and sports and the high standard of living which characterizes its inhabitants, the examinations conducted in connection with the selective service program revealed a shocking state of affairs. During World War I about one-third of the draftees were turned down as physically unfit and it was generally believed that marked improvement in national health had been made since that time. Even allowing for somewhat stricter medical standards at present and the fact that about 15 per cent of those rejected are reclassified for limited military service or for active duty following medical treatment, the situation is far from bright with 900,000 out of the first 2,000,000 rejected for physical or mental disability.

Prior to the declaration of war the older men had apparently found it difficult to adjust to Army life and the War Department therefore recommended that those over twenty-eight years of age in training in 1941, though legally subject to service, be permitted to return home and in the future, at least for the time being, deferred. There has been considerable discussion of Army morale, with conflicting reports as to the actual state of affairs. The adjustment of civilians to Army life is doubtless always somewhat difficult; many young men who have rarely if ever been away from home have found themselves homesick. The fact that the United States long stood on the brink, partially in and partially out of the war, probably contributed to the discontent of some who maintained that the whole undertaking was foolish and uncalled for. Needless to say, morale is exceedingly important in making an effective army. Perhaps the Army needs to relax somewhat its strict insistence on petty discipline. Considering the proportion of university graduates in the new army, an attempt might be made, as in Germany,¹ and the Soviet Union, to break down the hitherto considerable barrier between officers and men.²

University students are particularly interested in their status under the selective service system. The original act provided that those regularly enrolled in a college or university at the beginning of the academic year of 1940-1941 might be permitted to complete the college year, but that thereafter no special consid-

¹ In his book *Pattern of Conquest*, Doubleday, Doran and Company, Inc., Garden City, N. Y., 1941, Joseph C. Harsch, well-known correspondent of the *Christian Science Monitor*, points out that the Germany army is paradoxically the most democratic in organization of all armies.

² As Professor A. N. Holcombe pointed out at the 1941 meeting of the American Political

eration should be given students in educational institutions. As a matter of practice the authorities attempted to be reasonable during the second year of the system, allowing those attending school to finish the semester in which they were called for service and deferring those reasonably near the completion of degrees in engineering, physics, and medicine. The whole basic philosophy underlying this requirement is such as to occasion considerable controversy. Advocates of the rule maintain that it would be a great mistake in a democratic government to give advantage to those who are pursuing their educations, since it would add to class consciousness. Critics point out that England, Canada, Australia, and China, which have been more involved and threatened than the United States and have democratic institutions, have been more lenient toward university students on the ground that large numbers of trained men would be necessary for reconstruction purposes after the war and that interruption of training would be a shortsighted policy.¹

During the First World War the draft was almost entirely controlled from Washington and local authorities were permitted very little leeway. The dissatisfaction resulting from that experience caused the selective service machinery of 1940 to be decentralized. The broad policy is laid down by Congress, but the local boards are allowed considerable discretion in administering the act, even to deciding who shall be deferred. The standards adopted by the local boards varied quite widely, at least prior to the declaration of war, with the result that some boards followed a very strict policy and granted almost no deferments, except in cases of obvious disability, whereas others were quite liberal. It is, of course, possible to appeal from the harsh rulings of local boards, to state and even national agencies, but this does not entirely remove the criticism of the lack of uniformity which has been apparent.

**Criticisms
of Local
Boards**

MILITARY AND MARTIAL LAW AND MILITARY GOVERNMENT

The Constitution authorizes Congress to "make rules for the government and regulation of the land and naval forces"² and this Congression Science Association, the proportion of highly trained and intelligent men in the Army is now higher than ever before. This would seem to make it logical to place officers and men more nearly on a plane. The German efforts in this direction are given credit for much of the excellent morale in that army.

¹ It is only fair to note that university students are far more numerous in the United States than in these countries.

² Art. I, sec. 8.

gress has done in the form of military law.¹ Members of the armed forces are not immune from civil rules and regulations when they are away from military reservations,² but their general conduct is regulated by a special type of law which is enforced by military police and courts-martial. Minor infractions of the provisions of military law are punished by various penalties, including imprisonment in a guardhouse, loss of privileges, and deduction from pay for a stated period. More serious offenders may be sent to the military prison at Fort Leavenworth or in extreme cases condemned to death. The Army and the Navy have legal branches headed by judge advocates general, and manned by professional lawyers who are attached to the various divisions and corps areas. Under the supervision of these services, courts-martials, composed of officers, are set up to pass on offenses which are committed by members of the Army and Navy. It should be noted that military law applies only to members of the armed forces and never to civilians, even when they are involved in difficulties on military and naval reservations.

Somewhat similar to military law in its general spirit, but quite different in scope, is another type of law known as "martial law."³ If war operations, labor troubles, or natural catastrophes such as earthquakes or floods carry in their wake difficulties that the regular civil authorities are not able to cope with, martial law is sometimes proclaimed. As far as the national government is concerned, martial law is a rare thing, since most of the events which would lead to its proclamation are local in character and hence call for action by the governor of a state rather than by the President or Congress of the United States. Only in cases of serious internal disorder, invasion, or actual war is martial law authorized by the Constitution and then it is not intended that it apply beyond those areas immediately affected. Martial law was proclaimed in Honolulu and Manila in December, 1941. When a proclamation has been made, the ordinary civil authorities and laws are at once subordinate to the military authorities designated by the President or Congress, though they may not be supplanted entirely. The rules of martial law apply to all

¹ For additional discussion, see John H. Wigmore, *Source Book of Military Law and War Time Legislation*, West Publishing Company, St. Paul, Minn., 1918.

² In 1942 the War Department announced that only in extremely serious cases involving felonies disqualifying for military service would soldiers be surrendered to civil authorities. See the *New York Times*, January 10, 1942.

³ Much additional information in regard to martial law is available in Charles Fairman, *The Law of Martial Rule*, Callaghan and Company, Chicago, 1930.

civilians within an area designated and may also affect military personnel. Unlike ordinary law or military law, martial law is not an established system, since it depends upon the judgment of the military officer named to administer it. In other words, the rules of martial law may vary from place to place and from time to time; even within a single area under martial law it is possible to have changes made from day to day at the discretion of the officer in charge. Martial law is supposed to be drafted in such a manner as to fit the local needs and hence if the situation calls for drastic control the rules may be very harsh indeed, even to shooting on sight at night within forbidden areas. Martial law, as proclaimed by the national government, does not carry with it the suspension of the writ of habeas corpus unless actual military operations in the vicinity require this extreme step.¹

A third term, sometimes confused with military law or martial law, is actually quite different from either one. "Military government" is that system which is set up by the military forces in occupied foreign territory. The President ordinarily authorizes this step to be taken when the occasion arises—which is actually very rare—and the commanding officer in the area then becomes the final authority as far as local civil administration is concerned. The local laws may be ignored or modified if the situation seems to require such procedure, but in general military government is based on the legal system which has been operative prior to the military occupation.

- Military government rarely lasts for more than a few months, since some more permanent provision is usually made by that time.

**Military
Government**

DECLARATION OF WAR

Prior to the appearance of the totalitarian dictators, the world was not exactly peace-loving at all times, but there were certain forms which were usually observed when war was resorted to. Among these was the formal declaration to the enemy and to the world that a state of war existed. Dictators prefer to ignore many of these old forms for one reason or another and rarely see fit to declare a state of war. To some extent this is perhaps because they often follow *blitz* tactics and with lightning speed descend on their victim before he knows what is being planned. Again it suits the fancy of Hitler, particularly, to pretend, irrespective of the actual facts, that he is the one being aggressed on rather than the aggressor. Thus when he gets ready to strike, his

¹ This was clearly stated by the Supreme Court in *Ex parte Milligan*, 4 Wallace 2 (1866).

propaganda machine begins to grind out atrocity stories of Germans who are murdered by the barbarians who inhabit a neighboring country; after that technique has stirred up the feelings of enough people, he then often has it reported that the troops of the neighboring country have invaded the territory of the Reich.¹ All of this is more or less pure invention on his part, but he enjoys such sport and apparently considers it far superior to declaring war. Much the same psychology is to be observed in Japan, though if anything the Japanese have improved the technique. They pretend to believe—and possibly do actually believe—that they are carrying the blessings of heaven to the countries which they invade; thus, the official announcement may read that the “Emperor in his gracious mercy has seen fit to extend the blessings of the rule of the Son of Heaven” to the benighted people of a foreign land. The result is that one of the bloodiest and most destructive wars of all history broke out in the Far East in 1937, but no declaration of war was ever made by the Japanese against the Chinese.²

¹ For accounts of what happened in connection with the invasion of Czechoslovakia, Poland, Holland, Denmark, Belgium, Norway, and so forth, see Nevile Henderson, *Failure of a Mission*, G. P. Putnam's Sons, New York, 1940.

² According to Domei, the Japanese News Agency, the Japanese imperial rescript declaring war against the United States and Great Britain was as follows:

We, by the grace of heaven, emperor of Japan seated on the throne of a line unbroken for ages eternal, enjoin upon ye, our loyal and brave subjects:

We hereby declare war on the United States of America and the British empire.

Men and officers of our army and navy shall do their utmost in prosecuting the war, our public servants of various departments shall perform faithfully and diligently their appointed tasks and all other subjects of ours shall pursue their respective duties; the entire nation with united will shall mobilize their total strength so that nothing will miscarry in attainment of our war aims.

To assure the stability of East Asia and to contribute to world peace is a far-sighted policy which was formulated by our great illustrious imperial grandsire and our great imperial sire succeeding him and which we lay constantly to heart. To cultivate friendship among and to enjoy prosperity in common with all nations has always been a guiding principle of our empire's foreign policy.

It has been truly unavoidable and far from our wishes that our empire has now been brought to cross swords with America and Britain. More than four years have passed since China, failing to comprehend the true intentions of our empire and recklessly courting trouble, disturbed the peace of East Asia although there has been re-established national government of China with which Japan has effected neighborly intercourse and co-operation, the government which has survived at Chungking, relying upon American and British protection, still continues to be fratricidal opposition.

Eager for realization of their inordinate ambition to dominate the orient, both America and Britain are giving support to the Chungking regime and have aggravated the disturbance in East Asia.

Moreover, these two powers, inducing other countries to follow suit, increased military preparations on all sides of our empire to challenge us.

They have obstructed by every means our peaceful commerce and finally resorted to

The Constitution confers on Congress the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."¹ Declaration of war is accomplished by joint resolution which is then submitted to the President for signing and announcement. In the Spanish-American War hostilities were begun before a declaration and in the Civil War no declaration at all was made because of the domestic character of the conflict. However, in general the United States has observed the approved etiquette in a reasonably careful manner. The President as commander-in-chief of the armed forces might, of course, plunge the country into warfare by sending the military into another country, much as Hitler has done in Europe. But Presidents have been disposed to exercise that power with due care. Many people believed that the new pattern established by the dictators might lead to a general abandonment of the formal declaration of war. However, in December, 1941, war declarations were made by the United States and Great Britain after Japan² had bombed Hawaii

Provisions
in the
United
States

direct severance of economic relations, menacing gravely the existence of our empire.

Patiently have we waited and long have we endured in hope that our government might retrieve the situation in peace.

But our adversaries, showing not the least spirit of conciliation, have unduly delayed settlement; and, in the meantime, they have intensified economic and political pressure to compel thereby our empire to submission.

This trend of affairs would, if left unchecked, not only nullify our empire's efforts of many years for the sake of stabilization of East Asia but also endanger the very existence of our nation. The situation being such as it is, our empire, for its existence and self-defense, has no other recourse but to appeal to arms and to crush every obstacle in its path.

The hallowed spirits of our imperial ancestors guarding us from any defeat and the courage of our subjects give us confidence that the task bequeathed by our forefathers will be carried forward and that sources of the enemy will be speedily eradicated and enduring peace immutably established in East Asia, preserving thereby the glory of our empire.

¹ Art. I, sec. 8.

² The United States declaration of war against Japan ran:

Declaring that a state of war exists between the imperial Japanese government and the government and the people of the United States and making provision to prosecute the same.

Whereas, the imperial Japanese government has committed unprovoked acts of war against the government and the people of the United States of America;

Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the state of war between the United States and the imperial Japanese government which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Japanese government; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

and Malaya; the United States also declared war against Germany and Italy after they had taken such steps against us.¹

MUNITIONS

Modern warfare involves the use of enormous quantities of munitions. Airplanes, tanks, guns, trucks, ships, and many other items are required not only in numbers that a few years ago would have seemed incredible but in many types. Thus in the case of airplanes the President talks in terms of 60,000 modern craft which include several types of bombers, fighter planes, transport planes, to say nothing of trainer ships, in 1942 and 125,000 in 1943. Tanks are no longer a matter of curiosity to be made use of as a sideline, for the *panzer* tactics of Germany have demonstrated the need for thousands of light, medium, and heavy types which have gone far in supplanting the hand-to-hand fighting of the older wars.² Airplanes are not effective unless bombs

¹ The Declarations of War against Germany and Italy were identic. The German Documents read as follows:

The President's Message

To the Congress of the United States:

On the morning of Dec. 11 the Government of Germany, pursuing its course of world conquest, declared war against the United States.

The long-known and the long-expected has thus taken place. The forces endeavoring to enslave the entire world now are moving toward this hemisphere.

Never before has there been a greater challenge to life, liberty and civilization.

Delay invites great danger. Rapid and united effort by all of the peoples of the world who are determined to remain free will insure a world victory of the forces of justice and of righteousness over the forces of savagery and of barbarism.

Italy also has declared war against the United States.

I therefore request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy.

FRANKLIN D. ROOSEVELT

The War Resolution

Declaring that a state of war exists between the Government of Germany and the government and the people of the United States and making provision to prosecute the same.

Whereas the Government of Germany has formally declared war against the government and the people of the United States of America:

Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Government of Germany; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

² President Roosevelt called for a production of forty-five thousand tanks in 1942 and seventy-five thousand in 1943.

are available in almost infinite numbers; submarines must have torpedoes; mechanical equipment has to have billions of gallons of gasoline; while the staggering array of machine guns, cannon, anti-aircraft guns, naval armament, and coastal defenses necessitates the production of thousands of tons of power and projectiles—a single night's use of antiaircraft guns in London may require several million dollars' worth of shells. All of this means that a country which expects to defeat the dictators must organize its industrial system in such a fashion that huge quantities of war supplies and equipment are constantly at hand. No number of men, no courage, no set of plans will be able in this day and age to withstand the combined assault of airplanes, *panzer* divisions, and naval craft unless they are supported by similar facilities. By the end of 1941 it was estimated that approximately 15 per cent of the industrial capacity of the United States was being devoted to the production of munitions; but this apparently constituted only a beginning. No one could say how much of the industrial output would have to be dedicated to this purpose before the Axis menaces ceased to threaten, but it is probable that a considerably greater proportion will be required—President F. D. Roosevelt announced plans calling for 50 per cent in 1942.

The national government maintains a number of arsenals and naval yards which manufacture ordnance, naval supplies, and even ships; the latter are also equipped to handle the repairs which have to be made on the vessels which constitute not only our Navy but that of our allies. During peace times a considerable part of the munitions and some of the warships can be supplied by these government-owned and operated plants. However, during a national emergency they become scarcely more than a drop in the bucket, so to speak, in meeting the requirements. Of course, arsenals, such as that at Watertown, Massachusetts, expand their activities and work both day and night, but they can hardly be expected to do the impossible. Navy yards at Boston, Brooklyn, Norfolk, San Francisco, San Diego, and other points have to take on so many extra functions in making repairs and furnishing supplies during wartime that they cannot construct any large number of new vessels.

Direct
Activities
of the
Government

In addition to the plants which are operated directly by the government, there are a number of powder-manufacturing plants, aluminum and copper mills, aviation factories, and other munitions works which

are owned entirely or in part by the government but operated by private companies.¹ Private capital is not attracted to the building of

Government Ownership and Private Operation costly plants which may have very short use and consequently it is necessary for the government to come in. This may be done through acquiring large areas of land, building factories for the manufacture of powder, and contracting with a private corporation such as du Pont to operate them. Or it may be a more indirect sort of thing, with the R.F.C. advancing large sums of money for expansion of already existing airplane factories under an agreement which permits the cost to be amortized out of profits over a short period of time.

But all of these above facilities are not nearly sufficient during a period when the country is engaged in a furious attempt to arm itself against any external threat. If in addition generous assistance has to be given to sister democracies, the situation becomes even more aggravated. Consequently it is necessary for the government to turn to private industry for large-scale aid. There are those who believe that the government should step in and take over private plants during a national emergency and bills looking to this end have been introduced in Congress. However, experience seems to indicate that it is more satisfactory to ask for the cooperation of private corporations rather than to take their properties over and operate them under government management. The plants under private ownership are going concerns and can proceed to their new work with a minimum of interruption and friction, whereas government operation necessarily involves a transition period during which there is almost bound to be confusion and lost motion. Moreover, the government has so much to handle during a national emergency that it becomes top-heavy and bound in red tape; taking over a large part of the industrial facilities of the country might very well tie everything up. In those cases where a private owner refuses to cooperate the government has the authority, granted it in World War I, to intervene and take over a plant or equipment. This is, of course, a necessary safeguard, though the power has been rarely used.

¹ The Defense Plant Corporation has been set up as a part of the R.F.C. to handle the construction of these plants. On November 19, 1941, it announced plans for a \$22,000,000 plant at Fairview, Oregon, with a capacity of sixty million pounds of fabricated aluminum a year. The plant was to be owned by the D.P.C. but operated by the Aluminum Company of America. At the same time a \$6,000,000 plant for the electrolytic production of copper was announced for Miami, Arizona. The Castle Dome Copper Company was given a fifteen-year contract to operate this plant. See the *New York Times*, November 20, 1941.

ORGANIZATION FOR TOTAL WAR

As early as May 25, 1940, F. D. Roosevelt set up in the Executive Office of the President an Office for Emergency Management to have general oversight over the national defense program. The Office for Production Management, the War Production Board, the Office of Price Administration, and the Office of Civilian Defense were placed within this office as they were created to deal with various aspects of the defense program. The special assistant to the President in matters relating to national defense was attached to O.E.M. in order to keep the chief executive informed of what was being done.

During normal times the Army, Navy, Maritime Commission, and other agencies purchase their munitions through direct negotiation and contract with the manufacturers or distributors. However, in a period of national emergency the demand is so great that this system is not adequate. In order to meet the exigency President Roosevelt created the Office of Production Management by executive order in January, 1941.¹ Prior to this the President had organized in May, 1940, a National Advisory Defense Council out of some hundreds of prominent industrialists, labor leaders, and experts, but as the defense program got under way it was apparent that something more centralized was needed. O.P.M. took over most of the council's work as well as the greater part of its personnel and started out to help the Army, Navy, and Maritime Commission spend the tens of billions of dollars which had been authorized. The general purpose of O.P.M. was to "convert the nation's industrial processes into a military economy." O.P.M. had at its head a general director and an associate director-general who was head of the labor division; it also had a director of priorities, a director of production, and a director of purchases. The internal organization changed almost from day to day as new problems arose, but for a considerable period twenty-odd commodity branches, devoting themselves to rubber, chemicals, ordnance, and so forth, did the basic work. Various committees of business men, labor representatives, and men of affairs acted in advisory capacities to O.P.M. All major contracts relating to defense had to pass through this agency before they could be signed by the Army and Navy and this served to head all of the important pur-

¹ See Executive Order No. 8629, issued January 7, 1941.

chasing in a single office, thus coordinating the total efforts and minimizing the bidding of one department against another.

The general weakness and divided authority of the O.P.M. were strikingly pointed out by the special senatorial committee headed by Senator Truman of Missouri early in 1942. This committee noted that the Office of Production Management had been more or less of a rubber stamp for the War and Navy departments, while in dealing with industry it had followed the tactics of a debating society. Moreover, it had ignored the crying need of converting the automobile factories into producers of munitions. Finally, the Truman Committee pointed out that it had refused to award contracts to small establishments equipped to turn out some two thousand aircraft yearly while at the same time signing contracts with concerns whose factories were still in the blueprint stage. On January 16, 1942, President Roosevelt finally issued an executive order which provided for a War Production Board within the Office for Emergency Management. At first it was not clear whether W.P.B. was merely to take precedence over O.P.M. or to supplant it altogether, but it soon became apparent that O.P.M. was to disappear from the scene entirely. The title of this agency is somewhat misleading in that it suggests even more divided authority than characterized the Office of Production Management; actually the chairman of W.P.B. was given far-reaching authority in the executive order, while the members of the board were to give "advice and assistance."

Members of the War Production Board except for the chairman are *ex-officio* in character and include the following: the Secretaries of War, Navy, and Commerce, the chairman of the Board of Economic Welfare, the administrator of the Office of Price Administration, and the special assistant to the President supervising the national defense program.¹ Six major divisions of the War Production Board were shortly established to deal with purchases, production, materials, industry operations, labor, and civilian supply. Later partial responsibility for civilian supply was delegated to O.P.A., while a new subdivision was created to supervise the scrap collection program. A field service to organize the work of local offices scattered over the country, a progress-reporting agency, and committees on planning and requirements supplement the efforts of the primary

¹ In the original executive order the director-general and associate director-general of O.P.M. and the Federal Loan Administrator were named as members also.

divisions. Some idea of the elaborate character of the organization may be derived from a glance at one of the major divisions, that dealing with industry operations, which in addition to a chief had early in 1942 a deputy chief, two assistant chiefs, three special assistants, one executive assistant, and 24 sections.¹

The general purpose of the War Production Board is virtually the same as that of the earlier O.P.M.: to mobilize the economy of the United States for total war. Its subdivisions indicate the various fields in which it is working. In order to secure the essential supplies needed for ourselves and our allies W.P.B. has ordered the manufacture of automobiles, mechanical refrigerators, pinball games, and other articles for civilian use stopped; it has sought the building of large pools of vital raw materials, even to scrap iron; it has authorized the construction of extensive new plants and negotiated for the conversion of factories already in existence; it has attempted to see that machines are running 168 hours per week. Its requirements committee studies the war needs of the United States and her allies as well as the civilian needs at home and abroad. A planning committee, made up of experts in production and distribution, is intended to turn out plans for speeding war production and may also draft plans to meet post-war problems. Needless to say, the task of this agency is one of great importance as well as enormous difficulty. The very vastness of the industrial system is in itself enough to occasion many headaches. When to that is added the pressures brought by certain industries which fear reduced profits, by labor which opposes lowering of wage and hour standards, and by the general public which may not want to be unduly inconvenienced, it may be wondered whether even the authority conferred on Chairman Nelson will prove adequate. Nevertheless, his powers go considerably beyond those granted to O.P.M. and probably equal those exercised by Bernard M. Baruch of the War Industries Board in 1917.

Although many economists predicted as late as the spring of 1941 that the national defense program would not interfere with the pro-

¹ As of March, 1942, these sections were: automotive; rubber and rubber products; textiles, clothing, and leather goods; food supply; consumers' durable goods; pulp and paper; printing and publishing; service and distribution, office and service machinery; special industrial machinery; construction machinery; air conditioning and commercial refrigeration; transportation; communications; farm machinery and equipment; general industrial equipment; health supplies; toiletries and cosmetics; safety and technical equipment; plumbing and heating; lumber and lumber products; building materials; containers; furniture and bedding; and beverages and tobacco.

duction of consumer goods, it soon thereafter became apparent that the resources of the United States were not so large as had been supposed. For years, for example, it had been stated by the representatives of the steel industry that the facilities already at the command of that industry were adequate to supply any and all demands for steel that could possibly be forthcoming. But even before the national defense program had got well under way in 1941, steel, copper, aluminum, and a number of other commodities had begun to be scarce. In order to conserve the essential supplies for the national defense industries as well as to protect the more important users against the nonessential users, a system of priorities was established under the O.P.M.¹ As the situation became more acute and certain shortages threatened the successful completion of the program drawn up, the President in August, 1941, created the Supply Priorities and Allocations Board by executive order.² This agency was placed within the O.P.M., though it received a status approaching autonomy. Membership included: the director and associate director of O.P.M., the secretaries of War and Navy, the special assistant to the President supervising the national defense program, the administrator of the Office of Price Administration, and the chairman of the Economic Defense Board. The new War Production Board established by the President in January, 1942, absorbed S.P.A.B., though the priorities division of O.P.M. was allowed to remain in existence pending a new arrangement. The many demands made on the priorities division of O.P.M. and on the War Production Board made the task of allotting basic commodities a very difficult one. The first O.P.M. director of priorities worked out a plan of having the Army and the Navy specify the order of importance of various aspects of their programs. By the end of 1941 more than twenty thousand priorities applications were being received weekly and so many favorable ratings had been given that it was found necessary to review the entire situation and to institute a simplified policy. W.P.B. ordered a general reorganization of the system in 1942.

The purchasing departments of the Army and Navy, as well as O.P.M., were at first geared to dealing with corporations which could show financial responsibility and furnish supplies on a large scale. Thus orders of hundreds of millions of dollars went to such companies as

¹ This was placed under Edward Stettinius, borrowed from the United States Steel Corporation, who was assisted by a staff of some two hundred experts.

² Executive Order issued August 29, 1941.

General Electric, General Motors, Chrysler, Packard, Douglas Aircraft, and Bendix while the company with a single plant employing a few hundred workers found itself unable to receive consideration, unless it could work indirectly as a subcontractor through one of the large corporations. The lack of national defense contracts was not in itself particularly serious, but when the priorities system went into effect, these small businesses often found that they could not obtain materials with which to manufacture consumer goods that they had been depending upon. Some of these small companies saved themselves by negotiating with the big corporations for subcontracts, but many were unable to do this and some were forced to close. As the necessities of the defense and the lend-lease programs became greater, O.P.M. and W.P.B. were brought to a realization not only of the plight of the little factory but also the combined capacity of these plants for turning out defense goods. It was promised that by mid-1942 adequate adjustments would be made to bring small businesses into the program. Some five hundred clinics were scheduled as 1942 began for the purpose of bringing representatives of the large government contractors, small business men, and government officials together. In March, 1942, Chairman Nelson of W.P.B. announced that competitive bidding for war supplies would be ended in order to spread production among smaller plants.

**The
Problem
of Small
Business**

One of the problems incident to national defense activity is almost always that of rapidly increasing prices. Higher prices force the government to pay larger amounts for its munitions, encourage labor disputes arising out of demands for increased wages to meet higher living costs, and affect the general morale of the large number of people who have fixed incomes. In April, 1941, the President recognized this problem by creating an Office of Price Administration and Civilian Supply in the Office of Emergency Management.¹ Conflicts between O.P.A.C.S. and O.P.M. relating to curtailing automobile production led to a reorganization in August, 1941. The Office of Price Administration was left to give its attention to prices, while civilian supply was placed under O.P.M. O.P.A. then issued price schedules on such commodities as steel scrap, copper, silk, and hides and prior to 1942 secured voluntary consent from furniture, refrigerator, automobile-tire, farm-machinery, zinc, and lead interests fixing price ceilings. Through the pressure of public opinion, the threat of un-

**Price
Control**

¹ See Executive Order No. 8734.

favorable priority ratings, and the big stick of government contracts, O.P.A. managed to prevent some price increases, but it did not have direct authority to fix prices. Legislation was presented to Congress in 1941 giving the government comparatively large powers to fix prices, but much controversy arose as to several items. To begin with, the President and his advisers refused to include wages in the bill on the ground that wage control savored too much of totalitarianism. Many thoughtful persons then concluded that price control was out of the question, since if wages were not held within reasonable limits no system of price control could accomplish much. Large numbers of critics were unkind enough to charge the President with playing politics, maintaining that he was afraid to antagonize labor. The farmers, not to be left behind by labor, decided that they would not be satisfied with anything less than 110 per cent of parity prices based on the golden age of agriculture, the years 1909-1914, despite the fact that they had long stated that their maximum goal was parity and that they had learned from the inflation of World War I to beware of abnormally high prices. In the meantime while the arguments went on, in late 1941 prices were rising rapidly and many evidences of inflation began to appear. The Bureau of Labor Statistics reported that the general cost of living increased 11 per cent during 1941, while the prices of certain commodities went up as much as 50 per cent.

Finally late in January, 1942, Congress, after long-drawn out deliberations on the part of conference committees, passed a price-control act based on that submitted July 30, 1941, though with important changes. Senate Majority Leader Barkley excused the delay on the ground that it enabled a "better bill" to be enacted than would have been possible earlier, though he admitted that the new act had imperfections. In signing the bill the President declared, "I have doubts as to the wisdom and adequacy of certain sections of the act, and amendments may be necessary as we move ahead," adding that the people must cooperate in any successful attempt to stave off inflation.¹ The 1942 act authorized the President to appoint a single administrator to carry out its provisions, but it checked arbitrary action by setting up an emergency court of appeals to pass on decisions that were challenged. It may be added that President Roosevelt at once gave the new responsibility to Leon Henderson and the already existing Office of Price Administration. Though

The Emergency Price Control Act of 1942

¹ For the full statement, see the *New York Times*, January 31, 1942.

the law conferred no authority over salaries and wages, it did apply to rents as well as to general commodity prices. In the case of farm products the act specifically ordered that no ceilings be set which would represent less than 110 per cent of parity prices,¹ the level of farm prices during 1909-1914, and then only with the consent of the Secretary of Agriculture. As far as is practicable the act stipulates that price regulations shall be issued only after consultation with the industries affected and that a statement explaining the basis of ceilings must be made in each case. It may be added that the Office of Price Administration immediately proceeded to organize a field force to educate the people on price-control and to enforce the orders which it almost at once began to make.

Although the Emergency Price Control Act of 1942 has nothing to say about rationing, the Office of Price Administration has given a considerable amount of attention to such a necessity as a result of authority delegated to it by the War Production Board.

Rationing

W.P.B. itself handles rationing to munitions establishments through priorities, as we have already noted, but in addition there is the problem of rationing civilian supplies. To what extent this system will have to be applied is uncertain, but in the spring of 1942 O.P.A. was already rationing tires, automobiles, and typewriters. Preparations were being made for sugar rationing, and the appointment of a food coordinator seemed probable. The shortage of gasoline in seventeen eastern states and in the Pacific Northwest caused Secretary Ickes, the oil administrator, to announce that he had started negotiations with O.P.A. looking toward a rationing system for that commodity.

In May, 1941, the President issued an executive order² which set up an Office of Civilian Defense in the Office for Emergency Management for the purpose of coordinating civilian defense efforts with military plans, preventing undue disruption in local community life by defense activities, and promoting citizen morale. Mayor La Guardia of New York City received appointment to the directorship of this agency, while the wife of the President became the assistant director. Missions were sent to England to study fire-fighting techniques under bombing; plans were drawn up, though not carried far, to construct bombproof shelters in cities; and

**Office of
Civilian
Defense**

¹ There were really four "floors" provided for farm prices: 110 per cent of parity for 15 to 18 products; market price of October 1 and December 15, 1941 or the average price for 1919-1929 for seven products.

² Executive Order No. 8757.

local civilian defense committees were organized throughout the country.¹ Though O.C.D. outlined a reasonably impressive program, it unfortunately soon became involved in many quarrels and much unfavorable publicity. Mayor La Guardia found it difficult to get on with subordinates, ignored the state defense councils which had been set up to handle similar problems, became irritated when certain governors did not take his program as seriously as he considered proper, incensed many members of Congress, and got off on the wrong foot by stressing the construction of bomb shelters rather than less spectacular but perhaps more pressing problems. Mrs. Roosevelt conceived of the civilian defense program as one which should do a great deal more than furnish air-raid wardens, fire protection, first-aid, and emergency housing; in her eyes it was fully as important to improve morale and encourage physical fitness. Consequently O.C.D. employed dancers of various sorts, actors from Hollywood, youth leaders, and physical education fans to direct an array of activities. Certain congressmen seized upon this aspect of the program and, holding it up as "boondoggling," demanded that drastic changes be made. An attempt was started in Congress to bring O.C.D. under the War Department, despite the opposition of the latter to such a move; moreover, the \$100,000,000 appropriation requested by O.C.D. was held up until changes satisfactory to Congress had been effected.

Pressure finally became so great that Mayor La Guardia was forced to resign. Mrs. Roosevelt, disgusted by what she regarded as the

**Reorgan-
ization of
O.C.D.**

unfair tactics and provincialism of congressmen and other critics, also surrendered her post. Even before the final retirement of Mayor La Guardia, Dean James M. Landis of the Harvard Law School was brought in as executive director and later assumed the directorship. He almost immediately reorganized the agency into six divisions as follows: civil air patrol, civilian protection, administrative service, community and volunteer participation division, information division, and general interdepartmental council. Congress then somewhat grudgingly appropriated \$100,000,000 for gas masks, auxiliary fire-fighting equipment, and other civil defense implements, giving the War Department the authority to determine where the equipment should be used. Director Landis attempted to

¹ In November, 1941, there were 5935 of these councils with a membership of 949,508. These members included 214,566 air raid wardens, 49,403 auxiliary police, 214,146 auxiliary firemen, 29,356 medical corps aids, 63,207 drivers, 13,085 nurse aides, 19,066 road repair workers, and so forth. See the *New York Times*, November 23, 1941.

secure the cooperation of the state defense councils and concentrated on the more pressing of the many problems relating to civilian defense.

Late in July, 1941, Mr. Roosevelt felt that the time had arrived to create another defense agency of considerable importance. The Economic Warfare Board, headed by Vice-President Wallace, includes in its membership the secretaries of State, War, Navy, Treasury, Commerce, and Agriculture and the Attorney General. Each member was authorized to name an alternate to represent him in the event that other duties prevented attendance and the various defense and commercial agencies of the government were directed to appoint liaison officers to work with the board. Designated by the press as a "ministry of economic warfare" this board appears to have the potential power to veto acts of any defense agency in the government. Though primarily intended to deal with international aspects of the defense program, the Economic Warfare Board was also given instructions to plan for the postwar economy. Such matters as advising the President on economic measures essential to national defense, coordinating the efforts of the several departments interested in economic defense, transactions in foreign exchange, international investments and extension of credit, control of foreign-owned property, international aspects of patents, international shipping and communications, and acquisition of materials from foreign countries were entrusted to this board.

**The
Economic
Warfare
Board**

On the ground that one of the best ways to defend American interests would be to give aid to those countries already in active warfare with the totalitarian countries, the President recommended legislation authorizing the lending and the leasing of equipment and war supplies. By the spring of 1942 three lease-lend bills involving approximately \$18,410,000,000 had been passed by Congress and signed by the President.¹ A Lease-Lend Administrator was authorized to negotiate with the countries which it was desired to aid and to facilitate the carrying out of the agreements reached with these countries. Great Britain has, of course, been the chief beneficiary of this program, but China, the Soviet Union, and the Latin-American countries have also come in for substantial assistance. Planes, water craft, guns, medical supplies, food, and clothing are

**The Lease-
lend Ad-
ministrator**

¹ This amount represents direct appropriations. Direct and indirect lease-lend authorizations exceeded \$47,000,000,000 on March 3, 1942, according to the Office of Lease-Lend Administration.

among the items which are being furnished in increasing quantities to those countries which are attempting to defeat the axis powers.¹

CONCLUSION

Some idea of the scope of national defense efforts during the period beginning in 1940 may be derived from the amounts being spent for such purposes. By December 31, 1941, the United States had appropriated, authorized, or committed itself to the expenditure of the vast sum of \$74,440,000,000; by February 15, 1942, this had increased to \$104,698,000,000. It was estimated that at least \$31,500,000,000 would have to be added to this amount during 1942.² No one can foresee what the total cost of World War II may be to the United States, but responsible public officials frequently speak of sums exceeding \$150,000,000,000.

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¹ By March, 1942, approximately \$2,500,000,000 worth of lease-lend materials had actually been delivered. In a statement as of March 11, 1942, the President noted that \$2,570,452,441 worth of supplies had been delivered. This included assistance amounting to \$569,000,000 in February, 1942. See the *New York Times*, March 12, 1942.

² Statement of W.P.B. as reported in the *New York Times*, February 22, 1942.

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SECTION V
STATE GOVERNMENT

CHAPTER XXXVI

STATE CONSTITUTIONS

IT IS to be expected that forty-eight separate constitutional systems will present a diverse picture. Even if the several states were uniform in population and economic interests, it is altogether probable that there would be considerable diversity in their constitutions. When one takes into account the notable variation in area and population and the highly industrial complexion of certain states in contrast to the agricultural economy of other states, it is **Their Diversity** hardly to be wondered that one constitution devotes a dozen pages to a matter which is disposed of by another constitution in a single line. The situation is further complicated by the wide gap of time which separates some of the constitutions from others.¹ The constitutions of most of the New England states and New Jersey are almost as old or even older than the federal Constitution itself; the constitutions of Massachusetts and New Hampshire are usually dated 1780 and 1784 respectively. On the other hand, the newest constitutions have been framed during the present century and in certain cases since 1920.² Considering the great changes that have taken place in the United States during the last century, it would be strange indeed if state constitutions of the early nineteenth century fitted into the same mold as the more recent ones. The constitution under which New Jersey continues to operate requires only fourteen printed pages for its various sections;³ the constitution of Louisiana runs to more than 250 closely printed pages! Reflecting the popular will of the early nineteenth century, the constitution of New Jersey specifies annual election of certain state and local officials, while the newer constitutions tend to provide four-year terms for corresponding officers. Inasmuch

¹ Virginia drafted its first constitution in 1776, while New York followed suit in 1777. In both cases far-reaching revisions have been made, but there are remnants of the original documents in the revised constitutions. Texts of the various state constitutions are conveniently assembled in New York Constitutional Convention Committee, *Constitutions of the States and the United States*, State Printer, Albany, 1938.

² New York undertook a revision of its constitution as recently as 1938. New Hampshire revised in 1918-1920 and 1921, but the revisions were rejected.

³ The shortest original constitution is that of Vermont; then comes Rhode Island; New Jersey is actually third on the list, with 6,276 words.

as business enterprises were relatively small in size a hundred years ago, the older constitutions have very little to say about corporate structure and practices. In contrast the quite recent constitution of Oklahoma devotes fourteen pages of standard-size type to corporations alone.¹

Despite the striking variation to be noted among the state constitutions in both length and content, one must not ignore the basic agreement which they reflect on many aspects of government. **Their Similarity** Indeed it is fair to assert that in fundamentals they are more similar than they are divergent. Some of them omit elaborate provisions relating to the social and economic problems of the day; the more recent ones may be filled with prohibitions of one kind and another directed at the legislative branch; a considerable differentiation may be noted in the terms of office stipulated for elective officials. However, all of them specify a government of three branches: executive, legislative, and judicial, and establish these on a foundation of separation of powers. Moreover, in every case the head of the executive department is known as a "governor" and except for Nebraska all of the legislatures are divided into two houses. The labels attached to courts are not the same in all of the states—an intermediate court may, for example, be called a district, circuit, county, general sessions, superior, or oyer and terminer court. Nevertheless, there is not a little similarity in the general court structures of the several states. Local government is not the same in every detail throughout the United States, but the city and county are basic everywhere, except in Louisiana which prefers to maintain parishes but does not depart so far from the general functions entrusted elsewhere to local governments. Freedom of speech and of religion, the right to hold property, the historic writs of habeas corpus, mandamus, and injunction, and in fact most of the rights of citizens are substantially the same in all of the constitutions, with the possible exception of Louisiana which has used the Napoleonic Code as a basis for a legal system.

Under our system of government, the national government is given specific powers which are expressly enumerated in the Constitution.² States, on the other hand, do not enjoy such definite authority; they are supposed to have the powers which are not given to the national

¹ A convenient table containing pertinent data relating to the various state constitutions may be found in the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, pp. 48-55.

² Of course, this has been liberally interpreted by the courts to include implied powers.

government and are not expressly forbidden to them. This necessitates a far-reaching legal differentiation: the national Constitution must be searched for positive authorization, whereas a state constitution does not have to contain a specific clause which confers power. In other words, if an act of Congress is challenged, it is necessary to show the courts one or more provisions of the federal Constitution which grant such power; whereas when a state act is objected to, the courts will ordinarily only inquire whether the state constitution prohibits such an exercise of power. Thus the state constitutions tend to be somewhat more negative in character than the federal counterpart.

A General Comparison of the Federal and State Constitutions

The brevity of the federal Constitution makes for a general tone which is characteristic of the older state constitutions, but quite in contrast to the detailed provisions of the newer ones.

Varying Lengths

In both the federal and the state spheres the formal constitutions are supplemented by legislative enactments, judicial interpretations, and custom and usage. Consequently the actual constitutional systems of both the national government and the states are far broader than those who are familiar with only the formal constitutions assume. Inasmuch as the newer state constitutions frequently include large numbers of provisions that are similar to legislative acts in other states, the particular role of the formal constitution varies from state to state. Where the formal document is brief, much attention will have to be given the laws passed by the legislature and the decisions of the courts, as is the case with the federal Constitution. However, if a state constitution covers two hundred or so printed pages, the role of statutes is likely to be distinctly less important in the broad constitutional system than in the federal sphere.

Broader Constitutional Systems Compared

CONTENTS OF A STATE CONSTITUTION

A constitution of twenty pages can hardly cover the same ground as one which extends over two hundred pages; consequently it might seem that it would be impossible to make any generalizations in regard to the contents of the forty-eight state constitutions. As far as details are involved, it is almost, if not quite, out of the question to describe the forty-eight constitutions, since one may devote several pages to a matter which is entirely ignored by another. Nevertheless, there are a few broad generalizations that may be safely made and which will

throw reasonable light on the subject. Irrespective of their divergencies, most state constitutions concentrate on the following: (1) a bill of rights; (2) the framework of the state government; (3) state finance; (4) provisions relating to the regulation of business, the construction of public works, the maintenance of a public-school system, and the furnishing of certain welfare services; and (5) the amending process. These will now be examined individually.

It was early held by the federal courts that most of the provisions included in the first eight amendments to the federal Constitution do not apply to the states.¹ In order to extend the rights guaranteed in those amendments virtually all of the states have drawn up bills of rights which are attached to their constitutions. Some of these are more elaborate than others, but they repeat in large measure the rights of person and property which are mentioned in the first eight amendments of the federal Constitution. Thus freedom of speech, the press, and religion are everywhere guaranteed in principle, although they may not be fully observed in practice, particularly in times of emergency. Jury trials in the more serious criminal cases are stipulated, but the federal requirement of a grand jury indictment in these cases has been modified by many of the state constitutions so that the less cumbersome process of information may be substituted. The right to have counsel, to hear evidence produced against oneself, to be excused from self-incrimination, to have public assistance in subpoenaing witnesses, and to be free from "cruel and unusual" punishment are accorded almost without exception. The right to assemble for peaceable petition of the government is ordinarily extended, though it may be seriously curtailed in practice by the fondness of some state governors for proclaiming martial law. The right to hold property is everywhere admitted and compensation is ordered in those cases where private property is taken for a public purpose.

Although the functions of the various agencies of state government may not always be clearly specified in state constitutions, the structure is invariably given attention. The office of governor is dealt with in more or less detail; the composition and organization of the legislative branch are provided for; and the judicial system is at least outlined, although the details may be left to legislative discretion. Other elective offices ordinarily come in for attention in the older constitutions, which were drafted at a time when

¹ For a detailed discussion of these, see Chap. 6.

it was thought that all of the principal officers of government should be chosen by popular election. How much space will be devoted to the administrative agencies of state government depends in large measure on the period at which the constitution was adopted. In the early constitutions little or no attention was given to administration, since that aspect of government was still in its infancy. The newer constitutions invariably have something to say about the administrative departments and in the case of some of those which are the most detailed spend many pages in specifying structure and duties. County and city governmental structure is also laid down at least in broad outline and may in some instances receive generous attention.

Framers of state constitutions have long been interested in the financial aspects of state government. They have frequently attempted to regulate state indebtedness by naming a maximum amount ^{State} or fixing the relationship between the debt total and the ^{Finance} assessed valuation of property in the state. Sometimes they have set down the purposes for which a state debt could be incurred; occasionally they have declared that a debt shall only be permitted for protecting the state against invasion or domestic disturbance. The more recent constitutions not infrequently provide for income, inheritance, and other types of taxes, lay down rules in regard to assessment and review, and set up state tax commissions. Special appropriations for certain purposes may be prohibited.

Inasmuch as the national government has left the chartering of corporations in the hands of the states, detailed regulations must be drawn up which will govern the issuance of charters. Many ^{Business} of the states have had unfortunate experiences in dealing ^{Regulation} with business concerns and consequently take the precaution of inserting in their constitutions detailed restrictions relating to corporate organization, capital, responsibility of officers, revocation of charter, and taxation. Public-service corporations receive particularly careful attention because of their past record of political manipulation as well as because of their intimate relation to the public welfare. The Virginia constitution devotes something like a dozen printed pages to corporations, while the more recent constitution of Oklahoma goes to even greater lengths.

Education has occasioned states comparatively little of the embarrassment associated with economic enterprise, but even so the framers of state constitutions ordinarily are disposed to lay down a few gen-

eral principles. The extent of state control over local public-school systems may be indicated; provision is sometimes made for a state

Education and Public Welfare board of education and for regents of state universities; free textbooks may be prescribed; the revenues from public lands and certain licenses may be marked for educational use.

In the field of public welfare it is possible that a state constitution will lay down the general rules for workmen's compensation, stipulate pensions for the aged, describe the organization of the department of health, provide for the administration of the penal and insane institutions, and authorize the borrowing of money for public housing. A reading of the New York constitution of 1938 will indicate to what extent a modern state constitution may go in taking cognizance of the complex social problems of the day.

However careful the framers may have been in drafting a constitution, it will not be long before agitation for change arises. Errors may have crept in; the courts may have given an interpretation to a section which is not deemed satisfactory; new problems may arise which require constitutional authorization if they are to be handled; seemingly innocuous phrases may prevent action which is widely favored. In any of these exigencies an amendment will probably be suggested as desirable, perhaps to add clarification, again to add authorization, or in other cases to repeal troublesome limitations. The conventions which are charged with preparing state constitutions realize the necessity of amendment and insert sections relating to the procedure. However, there is a considerable divergence of opinion as to how easy the process should be and consequently the states are by no means uniform in their requirements.

TYPES OF AMENDING PROCEDURE

The traditional amending process looks to the state legislature for the originating of amendments. Proposals are presented by members

Amendment by Legislative Proposal much as are bills,—in a recent year, 1937, more than eight hundred were brought up in forty-three states ¹—and may or may not require more than an ordinary majority vote to carry them. Several states, anxious to avoid undue haste, demand that two successive legislatures approve suggested amendments before the next step be taken. After an amendment has been

¹ See H. W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, p. 3, January, 1938.

proposed—and fewer than 150 are usually approved in a single year by all the legislatures—it usually goes to the secretary of state's office to remain until the next general election when it is placed on the ballot for submission to the voters. Ordinarily a bare majority of the votes cast on an amendment is sufficient to ratify, but New Hampshire asks a two-thirds majority and a few other states have special requirements.

Those states which have adopted the initiative and referendum often supplement the traditional amending process by authorizing direct action on the part of the voters. The details of this method will be discussed later in connection with direct legislation.¹

Amendment by Direct Popular Action

In those instances where minor changes are desired in a state constitution, it is the custom to use the two methods described above. But if there is a widespread feeling that the constitution needs a general overhauling, it is somewhat awkward to employ either the legislature or, in those states which permit, the initiative. Something like two-thirds of the constitutions now in force authorize the calling of conventions for the purpose of considering a general revision. The legislature is ordinarily entrusted with the responsibility of deciding when this matter needs to be brought to the attention of the voters, although Michigan orders that it be done at least every sixteen years. If a majority of the voters favor a convention, the legislature then sets up the necessary machinery, deciding how many delegates there shall be, how they shall be chosen, where they shall assemble, when they shall begin work, and what their organization shall be. Of course the state constitution may have something to say about these items, but in most states the legislature is given that authority. Down to 1940, 189 conventions had been held, but only 21 belong to the present century.²

Amendment by Convention

State constitutional conventions vary in size, but there is considerable feeling that they should not be so large that they are unwieldy. In contrast to the bicameral legislatures they consist of a single chamber, with an organization not unlike that of an ordinary legislative body. Committees are appointed to examine various sections of the old constitution or to consider

Nature of Constitutional Conventions

¹ See Chap. 40.

² See W. Brooke Graves and I. J. Zipin, "State Constitutions and Constitutional Conventions," *Book of the States, 1941-1942, op. cit.*, p. 45. Of the 189 conventions, 126 undertook the complete revision of a constitution; 12 undertook revision through amendments; and 3 failed to submit any proposals.

the need for new provisions. The procedure is usually similar to that of ordinary lawmaking, with tentative drafts on certain points being submitted by members, committee investigation and report, debate by the delegates, and formal acceptance or rejection by roll-call vote. Party lines are frequently apparent and may, as in the New York convention of 1938, be almost, if not quite, as definite as in any state legislature. However, there is a feeling in some quarters that partisanship has little or no place in constitutional revision and this has been reflected in recent conventions to a reasonable extent.

Strangely enough, about half of the state constitutions do not specify that the work of a convention be submitted to the voters for approval, but usage is sufficiently strong to constitute an unwritten law ordaining such procedure.¹ In asking the voters to pass on what has been proposed, the convention has to decide whether to request blanket approval or to present a series of proposals. Experience would seem to indicate that it is preferable to break the proposed revision into a half dozen or so parts and ask the voters to express themselves on each part. After performing perhaps the best services that a convention has rendered since the beginning of the century, the New York Constitutional Convention of 1917 submitted its work to the voters in a single piece. Great praise was widely bestowed on the proposed text and it was generally taken for granted that the voters would accept as a matter of course what had been recommended. However, there was sufficient objection to various provisions to roll up enough votes to defeat the entire proposal and the convention thus had the embarrassing experience of seeing its work go for nothing. The 1938 convention, profiting from the earlier experience, decided to follow the other course and consequently asked the voters whether they liked the several parts of the proposed revision—although it may be added that certain politicians who hoped for the defeat of the entire project did their best at the last minute to prevent seriatim submission. Two provisions, including a prohibition of the use of proportional representation which had been vigorously fought by advocates of superior government from the very start, were rejected by the voters, but the remainder of the amendments were accepted.²

¹ Twenty-five of the revisions of constitutions have been rejected, and in thirteen cases some of the amendments submitted have failed to carry. *Ibid.*, p. 45.

² The proceedings of the New York convention are available in printed form and may profitably be consulted.

Submission
of Revised
Constitu-
tions

In view of the far-reaching changes that have taken place in the American scene during the last half century, it might be supposed that all of the states would have made generous use of the amending process. However, Tennessee has not changed her constitution at all since its adoption in 1870,¹ while Illinois and Kentucky have adopted only seven and eight amendments respectively, though in both cases their constitutions are nineteenth century.² South Carolina has amended her constitution 159 times; California 145 times; Georgia 132 times; and Louisiana 108 times. The total number of amendments adopted down to 1940 was 2040, or some 43 per state.³ On the face it might seem that some of the constitutions were so wisely drawn up to begin with that no modification has been deemed necessary, but actually the explanation is not that simple. It is true that the careful work of some conventions has made it less necessary to amend. But some states have grown more rapidly than others and have had to face complicated problems which were not anticipated when the state constitution was drawn up. The psychology of some states has been of such a character as to favor frequent change as a matter of principle. On the other hand, the basic caution of some of the eastern states has resulted in a grin-and-bear attitude long after amendments were definitely needed. Finally, there are those states which have been prevented from making changes by the onerous character of their amendment procedure. Where an amendment has to be proposed by two successive legislatures, a provision of the constitution permits only one or two proposals to be put to the voters at one time, and a majority of those participating in the general election are required to cast their votes in favor of the amendment, it is hardly to be expected that frequent changes will be achieved. If a few of the states make the mistake of veering wildly from one position to another, it is equally true that others have bound themselves so tightly by difficult amendment procedure that they are unable to accomplish desirable ends.

Diverse
Record of
States on
Amend-
ments

Several of the problems incident to constitutional change have been referred to in connection with the discussion above. We have noted that it is unfortunate to associate undue partisanship with the provisions of a constitution, since that is almost bound to generate re-

¹ See W. H. Combs, "An Unamended State Constitution," *American Political Science Review*, Vol. XXXII, pp. 514ff., June, 1938.

² Illinois has had her constitution since 1870, Kentucky since 1891.

³ See *Book of the States, 1941-1942, op. cit.*, p. 46.

sentment which will result in additional change at the first opportunity. If the process is made too easy, every little minority group is likely to sponsor amendments and the poor voter may be deluged with proposals—sometimes a dozen or more at a single election. An equally serious situation presents itself when the procedure is so cumbersome that highly desirable amendments are ruled out. The general character of the amendments must be carefully checked unless costly mistakes are to result; if highly technical questions are placed on the ballot for the consideration of the electorate it can scarcely be expected that an intelligent choice will be made. The selfish activities of pressure groups sometimes constitute a threat to wise constitutional change. A powerful organization may operate so successfully that it will write into the state constitution a provision that protects its own interests but is not consonant with the general public welfare. At times the pressure groups may be so numerous and so effective as to set up a barrier against much needed general revision of a state constitution. In such cases it will be admitted by the majority of the people that the current constitution is antiquated and that far-reaching changes are desirable, but it is felt that any revision would be so dominated by selfish pressure groups that the *status quo* is to be preferred, burdensome though it may be.

THE MODEL STATE CONSTITUTION

For more than twenty years the National Municipal League has been promoting the cause of adequate state constitutions by furnishing a draft of what its Committee on State Government regards as a "model state constitution." The first model constitution made its appearance in 1921 and revisions have been issued in 1928, 1933, and 1941. There is some difference of opinion as to how much practical influence this effort has had, but it represents the composite opinion of a considerable number of the leading authorities on state government and as such deserves the attention of students. Some idea of the careful attention given to the drafting may be gained from the fact that the committee spent two years on the 1941 revision.¹

The 1941 edition of the model state constitution contains 116 sections which are organized into thirteen articles dealing with bill of rights,

¹ For a discussion of the fourth revision, see W. Brooke Graves, "The Fourth Edition of the Model State Constitution," *American Political Science Review*, Vol. XXXV, pp. 916-919, October, 1941.

suffrage and elections, the legislative branch, direct legislation, the executive, the courts, finance, local government, civil service, public welfare, intergovernmental relations, constitutional revision, and a schedule. The length of the entire constitution may be described as "moderate"—careful attention is given to most of the current problems confronting states but there is not the plethora of details which clutter up some of the longest constitutions.

General
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The 1941 draft provides for a unicameral legislature because the members of the committee concluded that a "single body, chosen by proportional representation and not too large in number, will be at once more representative and efficient than the present two-chamber system." However, the committee explains that there is little probability that any large number of states will adopt the unicameral principle within the near future and even admits that it is not certain that the single-chamber legislature is well suited to the most populous states. A legislative council is provided, attention is given to the improvement of the committee system, and emphasis is placed on the conclusion that "from the point of view of protecting and strengthening the machinery of the democratic process, nothing is more important than the improvement of legislative procedure."¹ A popularly elected governor with a four-year term is given large administrative responsibility over a carefully integrated departmental setup. In order to relieve the governor of some of the very heavy burden that is involved in administrative supervision, the constitution recommends an administrative manager who shall have general oversight and be aided by a financial, a personnel, a planning, a research and statistics, and a public reporting and information assistant, though these positions are not specifically named as such. The courts are organized in such a fashion that unification rather than decentralization is a primary characteristic. A general court of justice is provided to handle all of the trial and appellate functions, while the chief justice is made head of the judicial department, with general responsibility for the operation of the judicial system. A judicial council assists the chief justice in providing continuous supervision of the courts and is given the rule-making power. The chief justice is elected by the voters, but the other judges are appointed for terms of twelve years by the chief justice from a panel of names drawn up by the judicial council; after a judge has served

Legisla-
tive,
Executive,
and
Judicial
Provisions

¹ See Graves, *ibid.*, p. 916.

four years he must come before the voters in an automatic recall election.

Inasmuch as the administrative aspect of state government is everywhere receiving major emphasis, it is to be expected that the model state constitution devotes a considerable amount of attention to these matters. Debt limitations, budget-making, expenditure control, postauditing, purchasing, and taxing powers are all dealt with. The governor is charged with preparing the budget and has the authority to reduce expenditures under the amounts appropriated by the legislative branch where he regards it as desirable. All administrative positions except those which involve policy-making at the top, together with legislative, judicial, and local government employees, are brought under a merit system. Provisions relating to public welfare seek to give the state adequate authority to deal with education, health, public assistance, welfare institutions, conservation, and housing. To prevent trouble arising out of a strict interpretation of these grants of power by the courts it is specifically declared in the constitution itself that "the enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government."

An article on local government stresses the principle of home rule in so far as it does not conflict with ample authority on the part of the state to deal with problems of general importance. The article on intergovernmental relations is intended to remove barriers to federal-state and interstate cooperation as well as to encourage the consolidation and cooperation of local units of government. Every twenty years the question of whether a constitutional convention shall be assembled is to be submitted to the voters.

THE PROBLEM OF LENGTHY CONSTITUTIONS

It is probable that there would be general agreement that the long-drawn-out constitutions of certain states are far from ideal. But is this equivalent to saying that the prevalent trend in the direction of detail is a matter of vital concern? There is no universal opinion on this point. Lengthy state constitutions necessitate frequent amendments unless obsolescence is to characterize them. This may require considerable time and effort from state legislators, voters, and perhaps the courts. Hastily prepared and ill-conceived limitations included in a constitution may hold up action on an important matter for years. On the

other hand, the very nature of our political process in the United States, the highly complicated economic system, and the diverse political psychology make more or less detailed constitutions almost inevitable. To those who look back with longing on the days when the role of government was comparatively slight and individual initiative relatively unfettered, the present trend will undoubtedly seem evil—perhaps on any basis of democratic political theory it is not to be approved. But practical considerations often call for developments which ignore beautiful theories.

There is no simple explanation of the movement in the direction of longer and ever more complicated state constitutions. At one period in our history it is probable that popular distrust of legislative bodies accounted for a great deal of the emphasis. Irresponsible and venal legislatures that disposed of public property to the highest bribers, dealt generously with some interests and harshly with equally deserving ones, spent public funds on divers unwise projects and incurred heavy debts without any adequate cause naturally did not inspire public confidence. To prevent these and other evils as far as possible, it seemed logical to insert provisions in state constitutions forbidding special legislation, limiting the power of the legislature to dispose of franchises, and specifying for what purposes and to what extent public indebtedness could be resorted to. Legislatures at present are more responsible than some years ago, but suspicion still remains in many quarters. Occasionally state legislatures have been so dominated by powerful corporations or pressure groups that they have ignored the demands made by the majority of the citizens. If the initiative is permitted, the voters may take matters out of the hands of the legislature and deal with them directly through an addition to the constitution. Even if the initiative is not available, the resentment aroused by such indifference may eventually cause constitutional limitations aimed at minimizing the power of vested interests.

**Underlying
Causes of
Lengthy
Constitutions**

State courts have not hesitated at times to decide fundamental questions in a fashion that displeased the people. In order to nullify these judicial actions amendments have occasionally been drawn up and finally added to the constitution. During the last two or three decades much of the trend in the direction of enlarged constitutions may be attributed to the popular will that the role of government should be given more prominence. In the case of the national government the elaborate statutes associated with the New Deal have served

this purpose—at least after the Supreme Court shifted its position. In the states the distinction between constitutional provision and important statutory law has more or less broken down, with the result that an appreciable portion of the program involving public housing for the low-income groups, pensions for the aged, and so forth, has been handled either entirely or partially by constitutional amendments.

STATE CONSTITUTIONS AND THE COURTS

State constitutions may be interpreted by either state or federal tribunals. In so far as it is alleged that a provision of a state constitution conflicts with the federal Constitution, it is possible to secure federal consideration, usually by the Supreme Court itself. Occasionally the highest court of the land will decide that a section of a state constitution contravenes some stipulation or prohibition of the federal Constitution, but this is not a common occurrence. On the other hand, state courts are constantly passing on phrases of the constitutions of the states in which they are located and frequently throw out state legislation on the ground that it is prohibited. The record of state tribunals varies from time to time and from place to place; consequently it is somewhat difficult to generalize. However, it may be stated to begin with that the attitude of state courts has been far less liberal toward state constitutions than that of the federal Supreme Court in the case of the national Constitution. Despite recent criticisms that have been aimed at it, the Supreme Court of the United States has in general followed a policy of expanding the federal Constitution to meet changing conditions—at least in so far as that could be done by implication. State courts, in contrast, have often, although by no means always, adopted a strict attitude toward the provisions of their state constitutions. Indeed at times it almost seems that they have gone out of their way to interpret a clause in the most limited way possible. This is doubtless due in part to the more negative and detailed character of state constitutions as a whole; it also may be attributed to the greater ease with which formal amendments may be added. Nevertheless, when all of these factors have been given due credit, it is still probable that the basic attitude of state courts has been less favorable than that of the federal Supreme Court in the case of the national Constitution.

During recent years there has been some disposition on the part of state courts to follow a more liberal policy. Less emphasis has been placed upon technicalities; a middle-of-the-road rather than an ex-

tremely legalistic course has been pursued. There are even a few instances where state courts have been distinctly liberal in interpreting provisions, even in cases where former justices have ruled that a narrow rule should be applied. Thus during the last decade the Indiana Supreme Court overturned two formidable barriers that had been a source of popular irritation for many years. After numerous attempts to amend the constitution in such a manner as to permit bar examinations had failed, that court interpreted the constitutional provision that candidates for admission to the bar should have a "good moral character" to mean that they should be adequately versed in the law. A little later the same court overruled a precedent of more than half a century which had made it virtually impossible to amend the state constitution by declaring that a favorable majority meant merely a majority of those voting on an amendment rather than a majority of all qualified voters.¹

The Current Trend toward Liberalism

The judges of state courts ordinarily hold their offices for limited terms and frequently receive their positions to some extent at least on a political basis. Federal Supreme Court judges, on the other hand, receive their appointments during good behavior and ordinarily have not been as intimately tied up with political organizations. Even in the case of the latter there are those who believe that political considerations enter into judicial attitude. Hence it is not strange that state courts should at times allow themselves to be influenced by other than purely legal considerations. Political influence is likely to be more prevalent in the lower state courts than in the highest; when it does intrude upon the scene of the appellate courts it often does not relate to constitutional matters. However, there are cases in which the highest state courts have apparently interpreted a clause of a state constitution in such a manner as to make it impossible for a legislature dominated by political rivals to carry through a program. In other instances they have blinded themselves to certain constitutional prohibitions in order that projects dear to the heart of governors and legislatures of their own party might be upheld. A Democratic supreme court bench in Indiana managed to find no obstacle to the far-reaching and somewhat fantastic reorganization of

Political Influences

¹ The ruling of the supreme court in the nineteenth century almost made the Indiana constitution unamendable. Many voters did not trouble to vote on the amendments at all and hence despite more votes in favor than against, it was literally impossible to secure a majority of all voters.

the state government by their fellow Democrat, Governor McNutt, in 1933, but when the Republicans came back to power and sought to accomplish their own reorganization in 1941, their attempts were branded as unconstitutional by the supreme court which was still controlled by Democrats.¹

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¹ It is fair to state that the Republican reorganization had more weak spots than the Democratic one, although both were primarily political in character.

CHAPTER XXXVII

THE OFFICE OF GOVERNOR

ALTHOUGH the forty-eight states may differ in their traditions and their activities, in every case a governor is provided to serve as head of the executive branch of the government.¹ That is not to say that the office is exactly the same in authority in every state, for there is a fairly wide variation in the powers conferred on state governors. In those states where a reorganization has effectively centralized the responsibility for supervising the multiplicity of administrative services, the role of governor is likely to be very important. In other states where a number of popularly elected officials, such as the state treasurer, the secretary of state, the attorney general, the auditor, and the superintendent of public instruction, are endowed with important authority and owe little obedience to the governor, the latter is the chief executive in a rather nominal fashion. Nevertheless, the position of governor is almost always regarded with considerable esteem by the citizens of a state and consequently even in those instances where extensive authority is lacking the incumbent is likely to be frequently in the limelight.

THE NATURE OF THE OFFICE

The constitutions of the various states lay down certain qualifications which candidates for the position of governor must meet. Citizenship in the state and the United States is always stipulated; residence of reasonable duration, often five years, is prescribed; a minimum age of thirty years is ordinarily asked. At one period certain religious beliefs were frequently considered essential, but most of the states have now abandoned any formal requirement of that character. Almost any candidate can meet these rather simple qualifications, but there are others imposed by custom which are far more onerous and which often rule out very able candidates. Except in rare instances, it is not to be expected that one who lacks strong political support will have any real chance of being elected

General
Qualifica-
tions

¹ The most up-to-date and authoritative study of governors is Leslie Lipson, *The American Governor: From Figurehead to Leader*, University of Chicago Press, Chicago, 1939.

governor, no matter how impressive a record he may offer in private affairs. This does not necessarily mean that a governor must have been personally active over a long period of years in politics, but it does ordinarily imply that there has been a friendly attitude toward the party organization. In many instances candidates who have had direct experience in politics have a distinct advantage over others because they know the ropes and have contacts which may prove helpful. Thus governors have frequently served as delegates to political conventions, members of state legislatures, prosecuting attorneys, and lieutenant governors before elevation to the position of chief executive.¹

Numerous other qualifications are sometimes ordained by the traditions of a certain state. In agricultural states there is often a disposition to expect a governor to have some connection with farming, though actual dirt farming may not be demanded. Hence candidates who own farm land, live in small towns which depend upon rural trade, act as officers of small banks which deal with farmers, edit farm periodicals or newspapers, or have been active in the farm bureau or grange have an edge over rivals. Where labor and agriculture are dominant, successful business and professional men sometimes find that their aspirations in the direction of the office of governor are more or less hopeless because of a strong feeling against such backgrounds. Mediocrity seems to be at a premium in some states because of a widespread distrust of eminence in a profession, business, or anything else; the people want someone like themselves in the office. As one man expressed it, "What this country needs more than anything else is five hundred first-class funerals. Get rid of those who have had more than an eighth-grade education or made a pile of money, and put common people in their places, and the country would be much better off." Nominal adherence to a conventional religious group is often almost an unwritten law, while prominence in an unpopular church may ruin an otherwise promising political career. Occasionally a comparatively young man like Governor Stassen of Minnesota² will be chosen, but an age of fifty is usually regarded as a stronger recommendation.

¹ In 1936 nineteen of the governors then serving had served in state legislatures, nine had held various state offices, and four had occupied seats in Congress. See C. A. Beard, *American Government and Politics*, rev. ed., The Macmillan Company, New York, 1939, p. 578.

² Harold Eugene Stassen was thirty-one when elected governor.

In the great majority of states governors are now nominated by direct primary, but there are such states as New York, Connecticut, and Indiana that cling to the party convention method.¹ Election except in Mississippi is always by popular vote,² although in several of the southern states the choice is actually made in the Democratic party primaries. In general elections the candidate who receives the largest number of votes is declared elected, though he may not have polled a majority of all the ballots cast.

The states are almost evenly divided at present between the two-year and the four-year term for a governor, although in the past the shorter term has been favored. Twenty-four states now provide a four-year term; twenty-three states remain loyal to the two-year term; and New Jersey compromises by permitting a three-year term. It is argued that four years is a long time to put up with a poor governor and that a corrupt chief executive can do a great deal of damage in that length of time. On the other hand, experience has indicated that two years does not permit a governor sufficient time to familiarize himself with the problems of a state and achieve anything like an adequate program. Even if reelection is not contrary to local tradition—eleven governors in 1941 were serving second to fourth terms³—a governor has to spend a good deal of time building up political fences and making arrangements to get himself a second term. The local situation may determine which term is preferable, but in general the four-year period seems to have the advantage. Twelve states currently limit their governors to a single term; four prohibit more than two consecutive terms; and Tennessee fixes a limit of three consecutive terms.

Considering the variation in population and wealth among the states it is not surprising that gubernatorial salaries are not at all uniform. A few states actually expect their governors to get along on \$5,000 per year or less—North Dakota pays only \$4,000 per annum—but the rank and file allow from \$5,000 to \$10,000. Anything in excess of \$10,000 is exceptional,⁴ although New York pays

¹ See Chap. 10 for a discussion of these methods of nomination.

² Mississippi uses a system somewhat like the electoral college, which is familiar in connection with the presidency.

³ *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 76.

⁴ Eight states paid from \$10,500 to \$25,000 in 1941. See the *Book of the States, 1941-1942*, p. 76, for a table of salaries paid by the several states.

its governor \$25,000 per year. With few exceptions states also furnish residences for the use of governors and their families. Various allowances are usually made for travel, incidentals, entertainment, and so forth, though the amounts involved may be far from generous. Some governors maintain that they are paid far less than they are entitled to, especially in view of the fact that football coaches and presidents of the tax-supported universities in their states receive half again as much. To some extent the difference is more apparent than real because of allowances which a governor draws in addition to his salary, but there are cases where the coaches actually seem to overshadow the governor. Needless to say, it is an interesting commentary on American values that this is permitted. Aside from whether governors are more valuable than football coaches, there is the question as to whether the former receive reasonable compensation for the services rendered. Even in a state which is not wealthy, a salary of less than \$5,000 seems niggardly. Yet there is usually no dearth of those who are willing to take the place, despite the financial sacrifice that may be entailed. It is only fair to point out that some governors carry on their private affairs along with their official duties and consequently do not depend entirely on public compensation. Nevertheless, in the larger states the job is one which demands all of the time and energy that a single person can give.

Although many governors have had their critics and few governors find it possible to please everybody, extreme cases of corruption and inefficiency have fortunately been comparatively rare.

Removal The eleven states that make provision for the recall of state officers have made use of this device only once in connection with a governor. Governor Frazier of North Dakota was recalled in 1921, but the depressed economic conditions following World War I perhaps accounted for this rather than any major shortcoming on his part; at any rate he was later sent to the United States Senate by the same voters. Impeachment is provided in all of the states as a device that may be used under extreme provocation to get rid of governors. The process resembles that which is provided in the federal Constitution,¹ although in New York a special impeachment court is set up to hear charges, thus relieving the state senate of that task. Texas removed Governor Ferguson from office in 1917 by impeachment, but it turned around and elected his wife, "Ma" Ferguson, as governor. Oklahoma

¹ For a discussion of this, see Chap. 19.

has the national record when it comes to using the impeachment process. Governors Walton and Johnson were actually taken out of office during the 1920's and attacks which did not result in successful impeachment have been launched against other governors.

The statistics relative to the recall or impeachment of governors do not tell the whole story. The inertia of the general public has condoned or at least ignored the conduct of governors which if not corrupt has been, to say the least, highly indiscreet. In other cases public opinion has become aroused only to find that it could accomplish little because of an irresponsible legislature. If a political machine controls a state government, it is probable that a corrupt governor will be flanked by a dishonest legislature. Inasmuch as the legislature has to vote and try the impeachment charges against a governor, it can hardly be expected under such circumstances that effective steps will be taken. Indeed it would be a case of a legislative pot calling a gubernatorial kettle black. The state of Indiana found itself saddled with a combination of this kind in the 1920's when the Ku Klux Klan controlled the state government.

**Removals
Difficult
when
Justified**

The tendency of the rank and file of the people to identify the governor with state government naturally makes his position strikingly important from a political standpoint. Moreover, the publicity which is generally accorded the governor keeps him constantly before the people. If the person holding the office has any force at all, he will enjoy a considerable measure of influence beyond any authority conferred on him by the state constitution or laws. When he goes on record as favoring a policy, an important step is taken toward bringing that policy into operation, even if some other agency of government has the final say. The very political committeemen and bosses who were responsible for naming the governor in the first place may find it difficult to withstand his influence, much as they loathe being jockeyed into such a position. Few of them have the popular support attached to the office of governor or the means of stirring up a widespread demand for action; consequently they may be forced to bow to the governor despite their rage and gnashing of teeth.

**Political
Importance
of the
Office**

A governor who manages his career well may use the office as a steppingstone to higher political office. During the present century Governors Theodore Roosevelt, Woodrow Wilson, Calvin Coolidge, and Franklin D. Roosevelt were graduated into the presidency. A

larger number have entered the Senate of the United States—among these may be mentioned O'Daniel of Texas and Maybank of South Carolina in 1941 and Chandler of Kentucky in 1940, to say nothing of the Huey Longs, the LaFollettes, the Johnsons, and the Fraziers of the past. Others have been given high positions in the national government; Paul McNutt went to the Philippines as high commissioner and later returned to Washington as Federal Security Administrator, Frank Murphy held a similar post in the Philippines and then took a place on the bench of the federal Supreme Court, while Governor Dern of Utah became the first Secretary of War under Franklin D. Roosevelt.

Almost every kind of person has at some time or other held the office of governor, but there are several types which are to be observed in the various states: (1) the strong leader, (2) the figurehead, (3) the man of the people, (4) the grafter, (5) the showman, and (6) the reformer.¹

At any time there will be a few governors who are outstanding as leaders, but they are, of course, always a small minority. Some states have been more fortunate than others in enjoying the services of men of outstanding ability,² though most of the states have at times, accidentally or otherwise, elected such men as governors. This type of governor has more than average intelligence, attractive personal characteristics, a reasonable understanding of human nature, a measure of persistence, an appreciation of the role of state government, and a substantial amount of courage and independence. He may come into more than local fame because of his achievements, but again the times may be such that he can do little more than butt his head against the stone wall of a machine, public inertia, or vested interests. A few of these outstanding governors have held office for a decade or so, while others have been defeated after a single term. Among the better known governors of this type during recent years may be mentioned Theodore and Franklin D. Roosevelt, Charles E. Hughes, Alfred E. Smith, and Herbert Lehman of New York, Woodrow Wilson of New Jersey, Wilbur L. Cross of Connecticut, Albert Ritchie of Maryland, Robert LaFollette, Sr., of

¹ For studies of governors falling into these several classes, see *State Government*, issues of December, 1935 to September, 1937.

² New York has perhaps been as fortunate in having this type of governor during the last three decades as any state.

Wisconsin, Frank Murphy of Michigan, and Gifford Pinchot of Pennsylvania.

In contrast to the strong-leader type there is that weak, colorless, and stupid creature who is maintained in the state capital by a political boss or machine. Of course, not all of those governors who owe their seats to the bosses belong to this type, for the more enlightened bosses and machines realize that only the most bedraggled citizenry will shoulder such an insult for any length of time. But every now and then a governor of this type will be named by those who have usurped the power of the people in a state. Needless to say, this type of governor has no contribution to make, no courage, no ideas, and no leadership; he is put there purely to serve as a front to the activities of the man or men who run the government behind the scenes. Huey Long kept this kind of figurehead in Louisiana after he surrendered the post of governor to enter the United States Senate. Other examples might be cited, but fortunately the number of these governors is not large at any one time.

It is probable that a majority of state governors at any one time belong to the third type. They are neither outstanding in their ability nor fools; neither men of great probity nor grafters; neither entirely the creatures of political bosses and machines nor men of commanding courage; neither originators of ambitious public programs nor completely satisfied to do nothing. In other words these are the governors who are mine-run in grade; they may be considered as fairly representative of the rank and file of the great body of voters. Under a popular government it is to be expected that this type will be commonplace. Some of them work hard at their jobs; most of them desire to fill their offices as acceptably as possible. The chief drawback is that they have no very definite ideas as to what a governor can do at best and hence they drift along from week to week, following a policy of opportunism. One cannot criticize these governors too severely, for they do as well as can be expected under the circumstances. Nevertheless, they are indirectly responsible for the mediocre character of much of present-day state government in the United States. Moreover, they represent a serious problem because it is difficult to perceive how they can be either obviated or improved. Inasmuch as they are typical of the American people and result from a psychological urge toward maintaining an average level, it does not seem likely that they will disappear from the scene or even become a minority rather

than a majority. Considering that they do about as well as their talents permit, they are not promising objects for in-service training. Nevertheless, something can be done to show them the best approaches to the problems of a state if the persons who have the necessary background are willing to take the time and do not yield to the constant temptation of impatience. It is not necessary to offer examples of this type of governor, since their number is legion and one has only to look about.

The dyed-in-the-wool grafter does not find the office of governor a very safe place from which to operate. That is not to say that the opportunities are not present, for the governor in those states which have centralized administrative authority could lay his hands on a great deal of bribe money, boodle, swag, and even on public funds to some extent at least. But the governor is so constantly in the limelight that it is difficult for him to make use of his opportunities, even if he has the inclinations of a gangster. Nevertheless, now and then individual governors apparently believe that they can successfully surmount the attendant risk and consequently yield to the temptation of corruptly exercising their authority. Occasionally a governor will escape any legal penalty for such misdeeds, but there have been several instances where criminal prosecution or impeachment proceedings have followed. During the present century, Colorado, Indiana, New York, Oklahoma, and Texas at least have suffered governors whose conduct led to trial on criminal charges or to impeachment proceedings. New York, Oklahoma, and Texas have actually removed governors from office by impeachment, while Indiana had the humiliating experience of seeing a chief executive incarcerated in the federal penitentiary at Atlanta.

More common than the outright grafter is the governor who cannot resist so-called "honest graft." The law does not render a governor liable because he fills the state offices with incompetents who are his friends or are recommended by political organizations, despite the tremendous damage that may be caused by such a policy. It is often possible to purchase state supplies from friends, relatives, and political supporters at somewhat higher than market prices. Associates may be appointed to lucrative receiverships of state banks which are continued year after year. Nominees of vested interests may be named to commissions and agencies which are supposed to regulate the practices of those special interests, with the result that there will be hardly more than lip service paid to the law. The governor may not receive

any monetary reward for all of these services, but his relatives, friends, and supporters may fare handsomely. Perhaps after he leaves office, he himself may be given a profitable legal retainer, a block of stock at a mere fraction of its value, or some other favor. The effect of this partisanship is usually very vicious as far as the standards of state government go, although it is openly less opprobrious than embezzlement, bribery, and related acts. The very pervasiveness of this "honest graft" in some states brings the whole state government to an inferior level.

Every now and then a state governor emphasizes the spectacular so greatly that he seems to deserve classification as a showman. Vaudeville, cowboy singing, boxing matches, hog calling, acro- **The Showman** batics are only a few of the tricks employed to attract attention. Some of these governors are fairly normal in much of their behavior and stand out only because of a single practice. Governor W. Leff O'Daniel of Texas, for example, carried on his public duties in an average fashion much of the time, but when he appeared with his "hillbillies" he presented a strange sight. Governor Richardson of California displayed his eccentricity by discarding the silver plate of the executive mansion in favor of granite ware and appearing at the commencement exercises of the University of California in an old pair of golf knickers and cap.

Perhaps the best example of this type of governor during recent years was "Alfalfa Bill" Murray of Oklahoma. As a comparatively young man in the national House of Representatives "Alfalfa Bill" was told by his doctor that he would soon die. Determined to prove the doctor wrong, he hit on the idea that most human ailments are caused by eating poisonous victuals—to be exact by eating the roots of potatoes, carrots, beets, turnips, and so forth rather than their fine green tops. So Murray went on a diet of vegetable tops and soon felt so vigorous that he led a colony to Bolivia. After many conflicts and difficulties with the Bolivian government, Murray decided to abandon his colonizing enterprise and return to his old home in Oklahoma. Here he became active in politics again and after a few years got himself elected as governor. Almost at once after moving into the executive mansion he caused the lawn to be plowed up and planted to potatoes. Even after he had passed the half-century mark in age, he rarely spoke in public without removing coat, collar, and tie and putting on a few handspings for the entertainment of his audience. No one doubted that he worked hard at his job, but his notions were so strange

that it was impossible to predict what he would do next as governor. And it may be added that this is the common experience with a showman governor; indeed he expends so much of his ingenuity and energy on entertaining the people that he has little left to devote to public affairs. Considering the fondness of Americans for a good show, it is perhaps strange that there are not more of these men in politics.

Occasionally a governor is elected on the basis of some reform which he has already carried through or which he promises. A prosecuting attorney gains a reputation by sending a political boss or corrupt public officials to penitentiary; then he capitalizes on this by asking the voters to choose him governor. Hiram Johnson came into the limelight when he prosecuted Abe Ruef and the San Francisco boodlers and sent them to prison.¹ Not long after he became governor of California. District Attorney Folk did the same thing in the case of "Colonel" Ed Butler and his Indians in Missouri, with subsequent election as governor.² Robert M. LaFollette, Sr., was elected governor of Wisconsin because he identified himself with breaking the political machine in that state and cleaning up politics.³ Governor Frazier of North Dakota promised prosperity to the people through his Non-Partisan League program of state-owned grain elevators, and so forth. After they ensconce themselves in the governor's office, these reformers may continue their efforts, they may rest on their oars, or they may take up other projects. At times they manage to bring about important changes in state government, although it is not uncommon for them to get so tangled in their efforts that they are discredited. Governor LaFollette certainly did not desist from his reform program after he took up his duties as governor; indeed it is doubtful whether during his long political career he ever surrendered his goal of improving the general standard of politics in the United States. Governor Frazier, on the other hand, discovered that his ambitious program of state socialism could not be kept afloat and eventually became a victim to public anger when he was recalled from office. All too often, those who march under the banner of reform are pseudo reformers who use this as a means of political advancement. Huey Long, for example, forgot many of the promises that he made in his "every-man-a-king" campaigns and built up one of the most

¹ See Harold Zink, *City Bosses in the United States*, Duke University Press, Durham, 1930, Part II, Chap. 20.

² See *ibid.*, part II, Chap. 20.

³ See his *Autobiography*, La Follette's Magazine, Madison, 1913.

powerful and corrupt personal political machines which the United States has ever witnessed. In general, it seems that the reform governor is not so commonplace at present as was the case a quarter of a century or more ago. Perhaps this is due in part to the regularization of reform by President F. D. Roosevelt and his associates in the New Deal. Governor Lehman of New York has drafted and had enacted social legislation which is far more ambitious than most of the "reforms" promised of old, but few people would think of him as a reform governor.

MULTIFARIOUS ACTIVITIES OF A GOVERNOR

Almost without exception state governors have heavy demands made upon their time and energy. The chief executive of a very populous state, such as Illinois or New York, may be busier than his colleague in a less thickly settled commonwealth, for example Vermont or Utah, but he has more numerous secretaries to relieve him of certain duties. The location of a state capital enters into the picture, since a metropolitan capital produces more social obligations than one which is small and somewhat distant from an urban center. The psychology of the people may also condition the burden; some states place more emphasis upon public speaking and formal occasions than others. But in any event, unless a governor withdraws himself from society, he is likely to be on the go from morning until night every day of the week.

Governors vary in the amount of time which they spend in their offices, depending upon whether they are regular in their habits or inclined toward restlessness. Much also depends upon how **Office** adequate a secretarial staff is maintained and upon how **Routine** easily a governor delegates his duties to others. There are governors who arrive at their offices before eight o'clock in the morning and remain, except when important engagements call them out, until well into the evening, at times even until midnight or after. At the other extreme there are those who get down slightly before noon, take a long time out for lunch, and spend only a modicum of time there during the afternoon. Something depends upon the time of year; if the end of a legislative session is near or the finishing touches are being placed on a budget, more time is naturally devoted to office duty than during the summer months when there is nothing out of the ordinary going on.

Most successful governors regard constant contact with the electorate as essential. This may be direct or it may be maintained

through intermediaries. Those governors who like people and find it agreeable to meet and talk to representatives of various sections of the population often devote many hours each week to receiving callers. If the word gets out that a governor is willing to receive visitors, it is a rare state which will not pour a constant stream into his office. Representatives of religious groups, civic organizations, taxpayers' associations, labor unions, chambers of commerce, and farmers like to discuss their problems with the governor and perhaps enlist his support for some project which they are sponsoring. Seekers of public jobs and contracts will bring their claims to the governor's personal attention if he permits. Visitors from other states may wish to extend greetings; school superintendents want the governor to receive their students who are touring the capital; there are the crowds of those who hope to increase their own sense of importance or satisfy their curiosity by calling on the ranking political officer of the state. Unless a governor has an iron constitution it is necessary to limit the number of callers, for he might easily spend all of his time on this alone. Some governors who do not find it easy to meet people adopt the policy of seeing only the most demanding and consequential callers, shutting off the remainder on their secretaries. In many cases it may be essential that a chief executive follow a policy of seeing only a few of those who wish to talk to him, but he loses a valuable source of information if he goes too far in this direction. Secretaries may report to him what they have learned; newspapers may furnish some idea of what is going on in the public mind; political advisers frequently can assist; but a direct personal contact has no satisfactory substitute.

There is an immense amount of paper work attached to the office of governor, especially in the larger states. The bills which are passed by the legislature constitute a heavy burden during the period when that body is in session. If the governor is responsible for drafting the budget, there is a great deal of paper work to be done in that connection. Where there is any responsibility for pardons and reprieves, the volume of documents often bulks large. Extradition proceedings involve official papers; litigation in which the state is a party may be handled directly by the attorney general, but the governor may also be called upon to pass on certain matters. Communications from the various administrative departments, the political organization to which the governor belongs, the many pressure groups in the state, the national government, and a host of other sources are constantly

coming in and often call for more or less careful attention. It is the custom to maintain secretaries who deal with patronage, pardons, extradition, routine correspondence, budgetary matters, and so forth, but even so a conscientious governor finds that he must give a great deal of time to paper work himself.

There is a tradition in many states that the governor will appear at numerous public functions, perhaps merely to take a bow, again to extend official greetings, or in other cases to make a formal address. Distinguished visitors from without the state are frequently received by the governor in person; conventions schedule a session at which the governor will appear to extend an official welcome; dedications of public buildings are not regarded as complete unless the chief executive presides or at least puts in an appearance. Political conventions on a state-wide level, of course, expect the presence of the governor if he is of their party. The state fair often designates one day as governor's day, thus making necessary a personal appearance if not a speech; the most spectacular football games at the state university see the governor and his staff in an official box; in a big-league baseball game the governor may be called upon to throw the first ball. Private universities may expect the governor to attend their commencement exercises,¹ to help inaugurate their presidents, and to address their convocations. In a populous state the public appearances alone constitute a heavy burden on a governor.

Unlike the President of the United States, a state governor is not ordinarily accorded a social position which excuses participation in social functions. Consequently all sorts of invitations are received for dinners, luncheons, theater parties, receptions, weddings, fishing trips, week-end house parties, and almost innumerable other events. Any governor may expect to be invited to many social affairs, whether he is reputed to be socially elite or not; if his social standing is high, the opportunities may be distinctly greater. A Democratic governor in a state capital whose society is dominated by Republicans sometimes finds that his family is not accorded first honors and vice versa, although if he is personally agreeable that recognition may be eventually extended. Some governors delight in the social life of their capitals and may be found almost every day of the week at various social functions; others follow a more restrained

**Public
Appear-
ances**

**Social
Activities**

¹ The presence of the governor of the Commonwealth of Massachusetts at the Harvard commencements has been specified by law for more than a century.

policy. But it requires great strength of will to refuse all of the social engagements which are showered upon an incumbent of the office of governor.

THE LIEUTENANT GOVERNOR

Three-fourths of the states provide lieutenant governors who are chosen in the same manner and must possess the same general qualifications noted in the case of the governor. It might be supposed from their title that these officials would be charged with assisting the chief executive, but this is not the actual situation in most instances. Lieutenant governors succeed to the post of governor in cases where the person elected to that position dies or is entirely incapacitated; they may take over the responsibilities of the office temporarily if the chief executive has to absent himself from the state for any purpose, though this is not always the case. The chief function of the lieutenant governor in most of the states where he is encountered is to serve as presiding officer of the senate, and hence he is ordinarily occupied in public duties only a comparatively short time every two years. However, Indiana has made him a full-time state employee, giving him the headship of one of the major administrative departments and paying him a salary of \$6,000 in addition to the \$15 per day allowed for presiding over the state senate when it is in session.

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CHAPTER XXXVIII

SPECIFIC FUNCTIONS OF A GOVERNOR

IT MIGHT be supposed that all state governors would have substantially the same functions entrusted to them, with the necessary adjustment made for the more complicated character of the more populous and highly industrialized states. Theoretically this is the case in large measure, for all of the governors are charged with executive and administrative responsibility, legislative cooperation, and military leadership. However, when one examines the actual authority exercised by the forty-eight governors, it becomes apparent that there is wide variation. Much depends upon whether a state has provided a centralized type of chief executive or preferred to retain the older decentralized type.¹

Nearly thirty of the states ² have now effected reorganizations of their governmental system in such a manner as to centralize a great deal of authority in the office of governor. The extent of the centralization varies somewhat from state to state, depending upon whether it has been accomplished by a thorough overhauling of the constitution or by legislative action.³ The political psychology of the state has also entered into the picture, for public opinion in some places is still very sensitive to an abandonment of popular election of state treasurers, secretaries of states, and so forth, or to a drastic curtailment of the doctrine of separation of powers.

Despite the wide diversity in extent of authority, it is possible to classify the functions of governors as follows: (1) making of appointments and removals, (2) supervision of administration, (3) oversight of financial matters, (4) granting of pardons and paroles, (5) legislative leadership and con-

A Classification of Gubernatorial Functions

¹ For a discussion of these two types, see Leslie Lipson, *The American State Governor*, University of Chicago Press, Chicago, 1939.

² Among the states which have centralized types of governors are the following: Illinois, Nebraska, Massachusetts, Idaho, Ohio, Washington, California, Maryland, Tennessee, Pennsylvania, Vermont, South Dakota, Minnesota, Virginia, New York, Maine, Georgia, Wisconsin, Indiana, Colorado, Kentucky, Rhode Island, North Carolina, Connecticut, Michigan, New Jersey, and Tennessee.

³ Most of the states have proceeded by statutory enactment rather than by constitutional revision.

trol, (6) military authority, and (7) relations with the national government and other states.

POWER OVER APPOINTMENTS AND REMOVALS

There is great diversity from state to state in the extent to which the governor exercises the power to make appointments. At an earlier period the state legislature usually was entrusted with the appointing power but that system gradually gave way, until at the present time the general assembly ordinarily chooses only its own staff of clerks, secretaries, and sergeants-at-arms. The governor succeeded the legislature as the dispenser of public positions and continues to wield that function to a greater or less extent in all of the states. However, in those states which have adopted a merit system he may actually have little to do with filling the rank and file of the jobs.

Unlike the Federal government, the states have long maintained elective positions in the executive and administrative departments. There has been a trend during the last several decades toward cutting the number of these down, but the common practice is still to fill the office of state auditor, secretary of state, and state treasurer by popular election. Some states go beyond that and place the attorney general, the superintendent of public instruction, the public service commissioners, and even more minor positions on an elective basis. Consequently the governor does not have the authority to name all of the department heads or policy-determining officials, despite the fact that he may be considered generally responsible for the conduct of their offices. On the other hand, it is important to note that the chief executive of a state usually has the opportunity of appointing a number of department heads. The more recently established administrative departments have rarely been placed in the same category as the earlier ones and hence the executive officers of the departments of public welfare, labor, health, commerce, agriculture, and conservation receive their positions through appointment rather than election. The governor may be given the sole right to name these officers or he may be required to submit nominations which have to be approved. The state senate, or in the New England states the governor's council, receives these nominations and must confirm them before they become effective. From the standpoint of efficient administration the governor should be permitted to appoint all of the administrative heads without the necessity of asking for confirmation,

Depart-
ment
Heads

but the old customs of popular election and legislative check are persistent in holding on. Nevertheless, there is a definite trend in the direction of giving the governor greater leeway in this field.

In choosing the policy-determining officers of a state, a governor is not always a free agent, even in those cases where legislative approval is not required. Political pressures are always present and except in rare instances dictate at least some of the appointments. Loyal supporters of the governor expect to be rewarded; factions of the party in power that need to be placated also must receive due attention; recommendations of the party officials bear considerable weight in most states; while the public utilities and other vested interests that have contributed through underground channels to campaign expenses will raise a great howl if their desires are ignored.¹ So the problem of the governor is not one of scarcity but rather one of adjusting the conflicting interests in such a way that there will be reasonable satisfaction. In most of the states there will at any time be one or more department executives who are personal friends of the governor, but they do not very often constitute a majority. In order to get his program accepted by the legislature a governor may have to promise numerous important places to members of that body.² It will be strange if labor has not been considered in choosing the labor commissioner or if the farm bureau has not had a great deal to say about the choice of the head of the agriculture department. The electric, telephone, gas, and railway companies are almost bound to dictate the appointment of at least one of the members of the public-service commission and it is not unknown to have their representatives constitute a majority.

For every policy-determining position in a state there are ordinarily hundreds of other jobs which call for clerical service, custodial work, technical consultation, and many other types of assistance. In the 40 per cent or so of the states that have adopted the principles of merit employment all or some of these places are filled by competitive examination and the role of the

**Factors
that In-
fluence the
Selection
of Depart-
ment
Heads**

**Minor
Positions
under a
Merit
System**

¹ Such corporations are usually prohibited by law from making direct contributions and so they manage to do it indirectly.

² Even a strong governor, such as Paul V. McNutt, had to bestow numerous important state positions on senators after the general assembly adjourned in return for support in putting through his program. The state constitution of Indiana prohibits legislators from receiving positions which were created during their service in the legislature, but little or no attention was paid to that limitation. The majority leader in the senate was named

governor is ordinarily unimportant—that is, if the system functions without political interference. In some instances an unsympathetic governor will almost, if not quite, manage to evade the merit rules entirely and hence keep his finger very definitely on what is being done. The Civil Service Commission may be filled with incompetents, as was the case in Ohio for some years;¹ its appropriations may be cut so drastically that it has no money to give examinations; temporary appointments dictated by the political organization may virtually supplant merit appointments. Nevertheless, in general a governor's authority over routine appointments where a merit system is in operation is not extensive.

In the majority of the states the spoils system continues to determine who shall hold state jobs. When one party loses out and another comes in, there may be a turnover in state personnel which exceeds 90 per cent.² If a party remains in power under a new governor, the displacement may not be wholesale in character, although it is not uncommon to find large-scale shifts. Even while a single governor remains in office, a spoils method of filling state jobs will frequently involve numerous changes as one faction becomes less powerful and another comes into greater favor. The number of positions in state governments is comparatively small in comparison with the more than a million in the national government—a few states employ twenty thousand or more but a pay roll of eight or ten thousand is much more typical. But even this number of jobs requires a vast amount of consideration if there is no merit plan.

**Minor
Positions
under the
Spoils
System**

How much personal attention does a governor give to the filling of these thousands of minor positions in those states where a merit system is lacking? No categorical answer can be given to that question because so much depends upon the state, the time, and the person who holds the office of governor. In some states there is a tradition of reasonable permanence though no formal merit plan is in operation and certain state employees retain their positions for many years. Again one or more departments may be permitted to develop modern personnel

director of the department of public welfare, although that department had been set up during his term in the senate, to cite a single example.

¹ During the Davey administration in the 1930's some competent observers considered the Ohio system worse than an outright spoils system.

² Before Michigan adopted the merit system, it experienced a turnover of approximately 90 per cent. With the parties in and out sometimes at two-year intervals the confusion was great.

systems, even though the rank and file of the state positions are filled on a spoils basis.¹ If there is a great dearth of jobs in private employment, pressure on the governor may become almost intolerable and he will feel it necessary to take a hand. Some governors have almost unlimited energy, enjoy receiving visitors, and spend a considerable amount of time going over the applications of those who want public jobs. In contrast, others will find so many other problems to occupy their attention and be so miserable in attempting to distribute a few jobs among an army of seekers that they will avoid personal activity in this field as far as they possibly can.

In those states where a political organization is strong much if not most of the labor in connection with the filling of state jobs will be done by the precinct committeemen, the county chairmen, and the state committee. Applications will be ignored by appointing officers unless the endorsement of these political agents is presented.² Governors frequently maintain patronage secretaries who act as liaison officers between the party organization and the state departments, receiving recommendations from the former, directing the applicants to departments which have vacancies, and clearing difficulties which arise. Needless to say, a governor may be hardly more than a figurehead under such an arrangement—in so far as he enters the picture at all it is merely to give general directions to his patronage secretary, issue the necessary orders, and seek to keep the political organization in good humor.

The role of the governor in removing from office is closely related to his power of appointing. In the case of department executives he may usually compel a resignation if he made the appointment
Removals in the first place, but, of course, he cannot get rid of elective officials. If confirmation by a senate or council has been necessary, consent may have to be secured before removal, but in most jurisdictions the governor is given full responsibility for vacating offices. The multitude of minor positions are not likely to call for the personal attention of the governor to any great extent. Where the merit plan operates, removals will be handled under the rules and machinery of that system. Under the spoils arrangement the governor may determine how many jobs will have to be vacated to make way for the

¹ The welfare department, health commission, banking department, and public education department are sometimes given this special status.

² See Chap. 9.

favorites of a newly prominent leader or faction, but he is likely to delegate to the department executives or to his subordinates the decision as to exactly who of the old employees must go. There is considerable question whether it is profitable for a governor personally to select the incumbents of minor positions; certainly it is not likely that firing those already on the pay roll to make opportunities for other political protégés will strengthen his political fences. Only a sadist could derive other than misery from the sad spectacle occasioned by dispossessed public employees whose chief fault is that they are not the favorites of the political organization or of the dominant faction.

SUPERVISION OF ADMINISTRATION

The governor is the logical officer to supervise the administrative departments of a state. Reports may be required by the legislature; the power over the purse strings confers large control of an indirect type; but the legislature meets only a few months out of the year at best and by its very nature is hardly fitted to exercise detailed supervision. The courts may check administrative action when it exceeds legal bounds; yet they are not in a position to give constant attention. Of course, administrative departments, for example the auditing department, may keep the others within certain limits when financial routine is involved, but they can rarely impose any general control. The truth is that there is no agency other than the governor equipped to assume the responsibility. Yet in the absence of supervision there is bound to be conflict, waste, duplication, inconsistency, inefficiency, and divers other weaknesses.

At the time that the older state constitutions were drawn up, public administration had appeared on the scene only recently. Administrative departments were few in number and were saddled with relatively simple functions; tradition usually ordained that their heads should be elected by the voters. The governor was expected to keep a weather eye on what was done, but he was given very little specific authority in this field. As governmental problems have become more and more complicated, the nominal supervision imposed upon the governor under this early setup has proved increasingly unsatisfactory. The chief executive subscribes to an oath that he will see that the laws are faithfully executed, but he actually has comparatively little real power to accomplish this end under the decentralized type of state government. In so far as admin-

The Role of the Governor under the Decentralized System

istrative functions are entrusted to elective officials, it is virtually out of the question for the chief executive to require coordination. Yet even under this system the governor is permitted to appoint some of the newer department executives as we have noted above; if his freedom of removal is safeguarded in these cases he can assert a measure of control over a part of the administrative services. In the case of the agencies that remain beyond his domain the governor can do little more than bring indirect pressure to bear: he may appeal to the people to support his point of view; he perhaps can persuade the party leaders to assist in bringing recalcitrant officials into line. He may possess such qualities of leadership that he will inspire a degree of voluntary cooperation. Finally there is a possibility that he can use his influence with the legislature in such a manner as to bring about some compliance with his wishes. But granted all of these indirect controls, the situation is not too satisfactory from the standpoint of effective administration.

In those states which have brought their governmental structures up to date the role of governor in state administration is more important. Elected officials are eliminated to a large extent and the governor is permitted to name almost all of the administrative heads. Even where secretaries of state, state treasurers, and other traditional officials are still chosen by the voters, the centralized reforms have frequently made them more or less figure-heads in their departments, conferring on the governor the power to exact cooperation. For example, the governor may fill all of the positions in these older agencies with the exception of the elective head and one personal deputy; if the elected head does not carry out the governor's wishes he finds his subordinates ignoring him because they look to the chief executive for their jobs. Real centralization gives the governor a more or less free hand in removing department heads who are unwilling to cooperate in a program of effective and coordinated administration. It may be added that even where the law confers this authority it is not always exercised in practice because of the political influence of certain officials.

The powers of appointment and removal are fundamental in achieving satisfactory administrative standards, but they do not suffice alone. They may be used in getting promising executive material to begin with and in firing those who have proved themselves incapable of fitting into an integrated scheme of administration. However, neither of these controls is of a

The Centralized Type

Controls Available to the Governor

routine character which can be employed to bring about day to day cooperation. Some governors have set up what amounts to a cabinet, the members of which are drawn from the major administrative agencies. Regular sessions of this body are held at frequent intervals for the purpose of going over common problems, clearing up misunderstandings, adopting uniform rules and practices, and giving attention to numerous other items which are essential to an efficient administrative system. Other governors prefer to deal with the various administrative heads on an individual basis and for that purpose schedule frequent conferences—even where a cabinet is used individual conferences are useful as a supplementary device. Telephone calls and formal communications in writing are also employed by governors in effecting a coordinated and smoothly operating system of administration.

It is probably evident that the task of the governor under a centralized arrangement is far from easy. It is not enough for him to make superior appointments and to ask for the resignation of those who prove unsatisfactory; nor will wise general policies always serve to produce an integrated system, since policies do not carry themselves into effect. A governor who expects to fulfill his obligations in this field must be constantly on the job, conferring, checking, suggesting, encouraging, and otherwise keeping his finger on what goes on in the various agencies. He must exact cooperation without interfering to such an extent that he will destroy departmental initiative. It is not strange, considering the difficulties involved, that comparatively few state governors have proved themselves masters in the administrative field; yet superior administrative standards can rarely be achieved in the absence of effective supervision on the part of the governor.

Effective
Supervision
not an
Easy Task

FINANCIAL OVERSIGHT

State constitutions follow the national Constitution in requiring legislative action before public funds can be spent—hence it is frequently stated that the control of the purse strings is in the hands of the legislature. At first sight it might seem that the role of the governor in financial affairs would necessarily be either nonexistent or at most very limited. However, there is a great deal more to state finance than merely passing appropriation and revenue measures. If there is to be order rather than chaos some provision must be made for preparing a budget; after the legislature has authorized expenditures and gone

home, an efficient financial system requires a considerable amount of supervision to see that the provisions of the budget are observed.¹ Various arrangements have been made by the forty-eight states for handling these important necessities: some of them have recognized the governor only incidentally, but there has been a distinct trend in the direction of placing the primary responsibility on the governor.

For many years state governments handled their expenditures in a haphazard manner, permitting each member of the legislature to propose the appropriations that interested him and trusting to providence that there would be enough revenue to pay authorized appropriations. The experiences of the present century have indicated that this easygoing attitude toward state finance was pushing states in the direction of insolvency; consequently almost without exception some attempt has been made by the states to establish more businesslike practices. At the present time the states ask either the governor or a commission made up of administrative and legislative officials, with the governor frequently a member, to handle this important job. It may be added that the trend for some years has been in the direction of making the chief executive responsible for preparing a budget. Of course, the governor does not do the detailed work himself, since that would be quite out of the question because of the large amount of work involved, but he is expected to lay down policies, keep informed of what is being done, and furnish general supervision. In addition to determining policies the governor may confer with the representatives of the agencies in regard to cutting their askings to such a point that the state treasury can be expected to find the necessary money. After the budget has been drafted the governor sends it to the legislature along with a message explaining its provisions and stating his recommendations. If the governor is permitted an itemic veto in financial measures, his voice in finally determining expenditures may be almost decisive.

After the budget has been enacted into law and the new fiscal year has started, experience has indicated that a considerable amount of supervision by some central agency is almost an absolute requirement. The state auditor will furnish routine supervision, but he is not in a position to exercise the general supervision which is so essential. The governor and his

Preparation of the Budget

Supervising the Operation of the Budget

¹ See Chap. 43 for a more detailed discussion of state finance.

immediate assistants are usually regarded as the logical persons to perform this task. They must check the irresponsible agencies that would spend all of their funds during the first six or eight months of the year and have nothing to go on the remainder of the year. It might seem that a definite rule that would limit expenditures each month to one-twelfth of the total appropriations would serve the purpose, but some agencies carry on most of their work during the summer months or during some other period of the year. A governor can permit such agencies to spend more rapidly than those which are uniformly active throughout the year. In the absence of supervision there are almost always departments which will spend their funds as they like, irrespective of the terms of the budget. The wisest minds cannot foresee what will transpire during a given year and hence it may be absolutely necessary to make expenditures that were not contemplated in the budget. What is needed is some central control which will hold agencies responsible for unnecessary departures from the items of the budget and at the same time will permit the transfer of funds from one purpose to another or even the incurring of deficits where no other way out seems to be available. If the governor is to be held responsible for what goes on in the administrative departments, it is evident that he is the person to exact such observance and permit necessary departures.

PARDONS

The pardon power is historically attached to the executive, for he is supposed to be able to determine whether the application of the law will work an unreasonable hardship in individual cases. In the states it is to be expected that the governor will be charged with this responsibility as a matter of general principle. However, as the position of governor has become more and more burdensome, it has seemed that it is unfair to expect the governor to assume full responsibility for passing on the many applications which are presented every year. Moreover, it is argued by some students of penology that a governor is not ordinarily informed of the details of the case and lacks scientific training in handling those persons with criminal proclivities. Consequently some of the states have set up boards, which may or may not include the governor in their membership, to handle this difficult task. Even where the governor's authority over pardons remains unimpaired, it is possible that comparatively little initiative will be assumed, since it is

customary to refer applications to a special secretary, to the attorney-general's office, or to some other agency for investigation and recommendation. The governor then, like the national executive, carries out the advice which he has received.

But there are still governors who give a considerable amount of their personal attention to reprieves, commutations, and full pardons. Needless to say, in a populous state the drain upon nerves will be great if a governor establishes the precedent of passing personally upon the appeals lodged by the friends and relatives of those sentenced to the more serious penalties. Especially where the death penalty is permitted, the tears, the impassioned pleas, and the agony of wives, mothers, and other relatives, to say nothing of the telegrams and letters that come in from friends and even from strangers who for sentimental or other reasons have become aroused, will almost incapacitate a governor who is reasonably sensitive. Alfred E. Smith has related the harrowing experiences which he underwent as governor of New York in connection with those who were sentenced to the electric chair; for several days before the date set for carrying out such a sentence he might find it difficult to transact other business because of the appeals which came to him; the night before he rarely found it possible to sleep at all.¹ Yet with rare exceptions there seemed no logical basis for his interference after a trial court had laboriously sifted the evidence and an appellate court had found nothing justifying a new trial. If the lawyers, the judges, and the juries had concluded after lengthy investigation that guilt was probable, what could a single man in the governor's office, removed from the crime both by time and space, hope to do? Sentimental governors have at times granted pardons simply because of personal appeals; political governors have occasionally followed the line of expediency; but only in rare cases can a conscientious governor expect to contribute to the orderly operation of the law by granting a pardon.

It may be added that the record of some governors has been anything but enviable in this respect. A governor of Arkansas several years ago granted a blanket pardon which literally emptied all of the penal institutions, while the Fergusons of Texas did almost as much to interfere with the process of justice. Fortunately there is a growing tendency on the part of governors to exercise this power with reasonable discretion.

¹ See his *Up To Now*, The Viking Press, New York, 1929, pp. 306ff.

**Problems
Incident to
the Pardon
Power**

**Abuse of
the Pardon
Power**

LEGISLATIVE LEADERSHIP AND CONTROL

We have already noted the significant expansion of the role of the President in legislative affairs during recent decades.¹ The record of the states is not uniform in this respect, but there has been a general trend along the same lines that characterize the national government. Almost everywhere governors exert more influence in lawmaking than ever before,² while in some instances they have virtually usurped the legislative authority for a few years. In those states that have reorganized in such a manner as to centralize administrative responsibility in the hands of the governor, this increase in the legislative importance of the chief executive has been particularly far-reaching. Control over the administrative agencies naturally gives rise to a recurring desire for new laws; a governor who can lay down the policies for the administrative departments assumes an air of importance which permits him to speak with authority to the legislature. Finally, it is probable that such a governor will be able to generate public opinion which will prod a reluctant legislature into favorable action. Some ambitious and power-loving governors have taken their cue from Franklin D. Roosevelt and managed to dominate their legislatures quite as completely as the President did in the case of Congress during the years following 1933.

There is an honest difference of opinion among those interested in public affairs as to the net effect of the enlarged role of the governor in legislative matters. Not a few substantial citizens view the situation with alarm, professing to see a serious menace to democratic traditions. Being less in the limelight, some governors have used their extensive power to build up personal machines which have not always been motivated by the highest ideals. In general, it seems fair to state that the exercise of far-reaching legislative power by state governors has been distinctly more selfish, more partisan, and more questionable than in the case of the President. Nevertheless, it cannot be disputed that there have been positive results, often of considerable magnitude. Delay in meeting pressing problems has been drastically cut; states in general are handling their functions with an efficiency never before equaled; and a great deal of

Results of
Gubernatorial
Leadership

¹ See Chap. 16.

² Nevertheless, certain governors of the past have exerted great legislative influence. Theodore Roosevelt once declared: "More than half of my work as governor was in the direction of getting needed and important legislation." See his *Autobiography*, The Macmillan Company, New York, 1913, p. 306.

most significant legislation especially in the public welfare field has been added to the statute books.

At the beginning of a legislative session the governor is expected to present a message in which he surveys the problems confronting the state, reports on recent accomplishments, and suggests what needs to be done immediately to meet new situations. How important one of these formal messages will be depends in large measure upon the person who holds the office of governor, the relations which characterize the legislative and executive branches of the government, and the temper of the times. Occasionally a message will not even be courteously received by the members of the legislature; in other instances it will be ranked with the prayer of the chaplain, the taking of oaths of office, and other formal ceremonies incident to the beginning of a session. And in those states where a governor belongs to one party and the legislature is dominated by another, as has frequently been the case in New York during recent years, the situation becomes complicated. Yet an able governor can accomplish a good deal even under such trying circumstances, judging from what has been done in the above state. From time to time during a session a governor will send in messages on specific items, which may have considerable influence.

A number of the recent governors, not content with making recommendations, have dropped on the lap of the legislature bills which they have drafted to cover certain situations. These bills may have originated in an administrative department, with the chief executive serving as little more than an intermediary. But in a good many instances they have been prepared under the personal direction of the governor himself and represent something in which the governor takes a deep interest. Legislators often resent what they regard as executive encroachment on their prerogatives and consequently may go out of their way to knife one of these bills. However, in some instances the influence of the governor is so great and the pressure behind a bill is so immense that they simply cannot be ignored. A number of the most significant statutes enacted during the last decade have originated in the executive office and been pushed through the various stages by the governor.

The traditional pattern of state government has ordained that the governor should manage the affairs of his branch and leave the legislature free to function as it desired. However, if the governor is to direct the administrative departments with vigor, he has to depend upon

support from the legislature in passing the laws which he wants and in making the appropriations required. Under an ideal system the legislature would doubtless be all too glad to cooperate with the governor, but in reality there are usually complicating factors. Legislative jealousy of a strong governor may throw up barriers; pressure groups which oppose the gubernatorial program may get in their digs through the legislature; political expediency and patronage hungers may dictate a legislative policy quite contrary to what the chief executive has in mind. In order to meet this very real situation governors sometimes take a very vigorous hand in planning the work of a legislature. By hook or crook, often by promising lucrative state jobs after the legislature has adjourned, they get the support of key legislators. Then they proceed to meet regularly with these members for the purpose of deciding what action shall be taken by the legislature; indeed they may go so far as to make detailed plans for the steering of the daily sessions. Paul McNutt gathered around himself what was informally known as a "kitchen cabinet," made up of some half a dozen of the leaders of the senate and house whom he had managed to bring to his support through various means. This little body convened in the afternoon before each legislative session, decided what the order of business should be in each house the next day, agreed upon the leeway to be permitted in debate and the offering of amendments, and directed the attitude to be taken on the elaborate series of bills in which the governor was interested. Of course, resentment is almost bound to accompany such complete dictation, but a powerful governor, backed by public demand for action during periods of depression or other emergency, may have his way, at least for a time. Incidentally it may be added that the amount of work turned out by a legislature which is bound hand and foot by a decisive governor will often be two or three times that finished under ordinary circumstances. How wise it is to achieve even the most desirable ends at such a cost may be a question.

It is improbable that a governor could carry through a very ambitious program of legislation in most states without making some use of his patronage power. If a different type of person is elected to the legislature at some future time, it may not be necessary to resort to offering jobs, promising political advancement, and otherwise dangling favors before the eyes of those who make the laws. But under the present setup, the majority of those who get themselves elected to seats in a state legislature expect to be rewarded for their

**Steering
Activities**

Patronage

services beyond the salary and honor attached to their office. It would not be fair to say that they have no interest in the public weal; certainly many of them would be very indignant if they were charged with being corrupt. Nevertheless, they want public jobs either for themselves after the legislature has adjourned or for their friends, relatives, and political supporters at once and they see nothing out of the way in expecting the governor to assist them if he wants their support. Following the first biennial session of the Indiana General Assembly held in his administration, Governor McNutt gave approximately thirty of the most influential members of the legislature lucrative positions on the state pay roll. Others received the very profitable liquor monopolies which were placed at the disposal of the governor under the law regulating the sale of beer and liquor.¹ How many profited from state contracts or indirectly through relatives is not known, but it was generally believed that virtually all Democrats were substantially rewarded.

Of course, such a system does not encourage the highest standards in government, for it necessitates the substitution of political jack-of-all trades for professionally trained persons and the paying of high prices for what is actually received by the state, but it has to be taken into account by those who view government realistically. There are, it should be added, degrees of observance of the rules of patronage. A governor of great personal ability and leadership who looks toward the achievement of an ambitious constructive program may find it possible to ignore patronage controls except in extreme cases, substituting the pressure of public opinion and his own personal dominance to whip the legislators into line. On the other hand, a governor of mediocre ability and very little skill as a popular leader who is the creature of the political organization and concerned primarily with keeping his seat will probably handle virtually everything on a patronage basis.

If a regular session of a state legislature refuses to dispose of a matter which the governor considers of first-rate importance or if unexpected problems arise which require immediate attention, a chief executive may summon a special session. In this connection some states authorize the governor to specify what items are to be considered by the special session and no other matter can then be dealt with. If a legislature meets for months every year, as in New York, special sessions are sometimes regarded as helpful in bringing the legis-

¹ Some of these monopolies were reported to be worth at least \$50,000 per year in profits.

lature into cooperation with the governor but they are less important than in those states which prescribe a legislative session of not to exceed sixty days every other year. The record of the several states is quite diverse in this respect; yet it may be said that considerable use is made of the power to summon special sessions.¹ On occasion the recalcitrance of the lawmakers may continue throughout one of these extraordinary sessions, but there is enough limelight focused on the legislators to encourage reasonable responsibility. In most cases a compromise will be accepted, even if the recommendations of the governor are not followed in full.

All of the states, with the single exception of North Carolina, confer on their governors the power to veto certain actions of the state legislature. The exact scope of this power, however, varies somewhat from state to state. Approximately three-fourths of the states follow the national example and require a two-thirds vote on the part of both houses of the legislature to override a veto, but other states make the veto barrier less of a hurdle, even to permitting repassage by an ordinary majority.² About half of the states make provision for the pocket veto of bills in case of legislative adjournment. All ordinary bills are presented to the governor for approval and he may sign them, permit them to remain on his desk without action for a specified period³ in which case they usually become law without his signature, or refuse to sign and return to the house in which they originated with his reasons for opposition. At the conclusion of a legislative session, particularly in those states which have rigidly limited sessions, an immense quantity of proposed legislation is usually awaiting the action of the governor because of the fondness displayed by the lawmakers for delaying final action until the closing days. About three-fourths of the states lay down definite rules in regard to the time which the governor may have to dispose of these accumulated bills and resolutions after the legislature adjourns. And it may be added that there is a wide range of practice, with three days being considered adequate in certain cases and as long as thirty days being given in others. Even if a state is generous in this respect a governor will find it almost impossible to give

¹ See Chap. 40.

² Thirty-five states require two-thirds of those elected or present; Alabama, Arkansas, Kentucky, Connecticut, Indiana, New Jersey, Tennessee and West Virginia require only an ordinary majority to override the governor's veto. See the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 78.

³ This period varies from three to ten days.

detailed consideration to every bill; consequently he ordinarily picks out those which he regards as particularly important either because he favors or opposes them, calling upon the attorney general for an opinion, consulting advisers, and otherwise trying to make up his mind. The remainder are permitted to die under the pocket veto if that provision is made; they are vetoed without careful consideration on general principles of caution; or they are permitted to become law because they are not emphatically opposed.

More than three-fourths of the states depart from the federal practice and give their governors an itemic veto. This may extend to all bills, as in Washington and South Carolina, but it ordinarily includes only appropriation measures.¹ Legislatures have not impressed the general public on the score of financial responsibility and hence there has been this widespread resort to gubernatorial veto of individual items. Needless to say, the itemic veto imposes a very heavy burden upon the governor if it is exercised with any degree of care. The financial systems of most of the states are now so complicated and require such large sums of money that it is literally impossible for a chief executive to go over every item in the various appropriation bills. But he may ask the budgetary officials to advise him as to items which are especially objectionable and if he is charged with overseeing the preparation of the budget himself he will have considerable familiarity with the main requirements of a sound financial plan.

As in the case of the President, governors frequently obviate the necessity of a direct use of the veto power by letting it be known beforehand that they strongly oppose certain legislation. Legislators, being human, do not like to have their efforts exposed to ridicule and contempt and hence frequently will desist from passing a bill if they know that the governor will veto it. Of course, if the state permits repassage by a bare majority vote, there may be less disposition on the part of the legislature to be deterred by a threat than where a two-thirds majority is specified. Much also depends upon whether the majority in the legislature and the governor belong to the same political party as well as whether there is a disposition to avoid open warfare. In the 1941 General Assembly of Indiana, for example, the governor's threats were of little or no avail because the governor was a Democrat

¹ For an informing article on this subject, see Roger H. Wells, "The Item Veto and State Budget Reform," *American Political Science Review*, Vol. XVIII, pp. 782-791, November, 1924. All but eleven states confer the itemic veto on their governors.

and the Senate and House of Representatives were both dominated by the Republicans—consequently bill after bill was passed only to be vetoed and in most cases passed over the veto a few days later.¹

But despite the real influence of a threat to veto in most cases, governors make distinctly more use of the veto power itself than the President. Indeed where the national executives veto a fraction of 1 per cent of all bills passed by Congress, governors sometimes veto 25 per cent or even more of the work of a state general assembly. The record of the states is strikingly divergent in this respect. One or two vetoes during each legislative session may be all that certain governors find it necessary to make—indeed during more than half a century the Illinois chief executives exercised this power on only two occasions.² At the other extreme are governors who refuse to approve two or three hundred bills in a single year.³

MILITARY FUNCTIONS

During a period of national emergency, when the National Guard has been called into active service by the President and perhaps incorporated into the national Army to such an extent that it virtually loses its identity, the governor has little to say about its use. However, he is likely to be given certain responsibilities in connection with raising an army; for example, he has recently been authorized to appoint local boards for administering the selective service system. The provisions made by the forty-eight states as to the wartime powers of their governors vary widely, but in general they are sufficiently ample to warrant the Council of State Governments predicting that few special sessions of legislatures would be required in 1942, despite the national defense program. Many of these powers may be traced back to World War I; others are conferred by state constitutions or in earlier statutes. Governors have more or less complete supervision of civilian defense within their states and appoint state defense councils which draft elaborate programs designed to protect property and persons, conserve supplies, encourage industrial production of war supplies, bolster morale, coordinate the efforts of various public and private agencies,

During
Wartime
or National
Emergency

¹ Most of these were later declared invalid by the Indiana Supreme Court.

² See A. N. Holcombe, *State Government in the United States*, rev. ed., The Macmillan Company, New York, 1931, p. 329.

³ New York, California, Pennsylvania, and Virginia are among the states with the highest veto rate during recent years.

and educate the people as to the necessities of war. It may be added that the federal authorities have recently used some of these state defense councils to provide machinery for rationing tires and automobiles.

Ten states empower their governors to organize all state resources, "whether men, property, or instrumentalities," while nine authorize their governors to acquire land or other property for military use. Twenty-six states permit their governors to send guard units to near-by states in response to requests for assistance; six states give their chief executives discretion in moving the seat of government during war emergencies.¹ Maryland provides that her governor may draft civilians for industrial employment; Colorado authorizes the closing of highways; while Florida confers the power to establish priorities on oil, coal, and certain other essentials. North Dakota specifies that her governor shall have "broad powers to deal with coal mine or public utility strikes" and Connecticut declares that maximum-hour legislation relating to women and minors may be suspended by the governor as a wartime measure. In general, Massachusetts and New Jersey seem to grant the most extensive wartime powers to their chief executives. In Massachusetts the Council of State Governments reports that "the chief executive may take any measures deemed necessary to carry out presidential requests for national safety and public safety," may seize any equipment or supplies in the state essential to defense, and may take, sell, or distribute fuel, livestock, and certain other basic commodities to the people of the state.²

In the absence of a national emergency the governor ordinarily serves as commander-in-chief of the National Guard of his state, although he will usually have an adjutant general to relieve him of the routine responsibility. His chief function in this field relates to the use of the National Guard for maintaining law and order during times of floods, earthquakes, fire, or other catastrophes and in connection with labor disputes. When a river floods hundreds of square miles of territory, drives thousands of people from their homes and destroys millions of dollars worth of property, the regular civil authorities find themselves unable to cope with the many unexpected problems. The members of the National Guard are the logical persons to be called upon for assistance in these instances, for their

¹ Connecticut, Maine, Maryland, Massachusetts, New Hampshire, and Rhode Island permit the moving of the seat of government during wartime.

² As reported in the *New York Times*, January 5, 1942.

training fits them at least to some extent to deal with emergencies of this character.

Much more difficult is the problem of using the armed forces for protecting property and maintaining order during strikes and labor disputes. It is probable that nothing involving the governor **Labor** has given rise to more bitter criticism and caused the chief **Troubles** executive more headaches. When a strike involving several thousand workers breaks out, the ordinary local police may find it difficult to handle the problems presented—they are usually burdened with routine duties to such an extent that they have little time or energy to devote to labor difficulties unless they are to neglect other duties. Almost immediately after an important strike is started, the owners and managers of the plant or properties affected will appeal to the governor for assistance; often they will bring pressure to bear on him if he seems reluctant to act. On the other hand, the forces of organized labor bitterly resent having the National Guard called out on the ground that it actually brings the state into the conflict on the side of capital. During campaigns candidates for governors in all of the industrialized states are invariably called upon by organized labor to express their views on the use of the National Guard and other state forces in connection with labor disputes and unless they can satisfy labor on this score they will lose the many votes controlled by the unions. Inasmuch as labor can often command enough votes to determine what candidate will be elected, candidates may feel called upon to pledge themselves not to send in the troops during a strike. Nevertheless, when the newspapers are complaining that the governor is derelict in his duty, the owners and managers are raising heaven and earth to get state aid, and public opinion may be aroused against the seeming unreasonableness of the labor tactics, the governor is often almost irresistibly moved to send in the National Guard.

The state is obligated to be neutral in a case where labor and capital find it impossible to agree. On the other hand, the protection of property from destruction is also a well-established responsibility of a state. Moreover, there has been a strong feeling in certain quarters that the state should protect those who desire to accept employment even in factories which are involved in a strike. The history of labor in the United States indicates that military forces have sometimes served to defeat the cause of labor and turn what would otherwise have been the defeat

**Pros and
Cons of
State Action in
Labor
Troubles**

of capital into victory. Besides, a considerable amount of bloodshed has resulted from the use of inexperienced National Guardsmen who in their own confusion have fired on crowds. The excesses associated with the proclamation of martial law make dramatic but depressing reading. Governor McNutt permitted himself to become so provoked over a comparatively unimportant labor situation in Terre Haute that he maintained a state of martial law over that area for some seven months, ignoring the well-established rights of civilians. One mild professor of middle age was arrested and jailed for waiting for his wife outside of a department store! The creation of adequate state police forces has helped the situation to some extent in that the use of inexperienced National Guardsmen is no longer so necessary. Nevertheless, the problem remains one which is likely to cause difficulty for years to come.

RELATIONS WITH THE NATIONAL GOVERNMENT AND OTHER STATES

The office of the governor is the main channel of communication between the state and the national government. Proposed amendments to the national Constitution are transmitted to a state through the governor; he in turn notifies the national Secretary of State as to what action has been taken by his state on amendments. When the national government desires to enlist the aid of the states in meeting a situation, such as removing barriers to a free flow of commerce from one part of the United States to another, it addresses its request to the various governors.¹ The handling of emergency relief following 1933 may also be cited as an example of federal cooperation with the states through the governors. In connection with the military duties of the governor, it has already been pointed out that the national authorities have depended upon governors to set up selective service machinery within their states.

The states necessarily have a good many relations with one another. Some of these involve direct negotiation by officials in one department with officials of the corresponding department in another state. The creation of commissions on interstate cooperation in most of the states has marked an important step forward in interstate relations.² Nevertheless, governors continue to have several duties in this connection. We have already noted that they have im-

¹ Secretary of State Hull followed such a course in 1940.

² See Chap. 3 above.

portant functions in connection with returning fugitives from justice to the state in which the alleged crime was committed.¹ Governors may institute proceedings of a legal nature against another state which seems to threaten harm, although the actual conduct of this litigation will usually be entrusted to the attorney general and his assistants. Finally, the forty-eight governors are members of the Conference of Governors which meets at least once each year for the purpose of discussing current problems of interest to the states in general. The personal contact among the governors does something to break down misunderstandings and jealousies; moreover, the exchange of ideas and experiences is often important in serving as a guide as to what is advantageous and what is to be avoided.

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¹ See Chap. 3 above.

CHAPTER XXXIX

THE STATE LEGISLATURE

ALTHOUGH there has been a general curtailment of legislative freedom and a widespread disposition to distrust the integrity of individual legislators, the state legislature remains a vital part of American state government. Indeed despite the numerous prohibitions directed at this branch of government in most of the states, it should be pointed out that legislatures have never been busier than they are at present. They receive more proposals looking toward action of one kind and another, enact more statutes, and appropriate more money than during the early years of the republic when they had greater prestige and a distinctly freer hand—an interesting paradox.¹

BICAMERAL VERSUS UNICAMERAL LEGISLATURES

During the early history of the states there was some difference of opinion as to whether bicameral or unicameral legislatures were preferable. Gradually the sentiment shifted in the direction of the bicameral arrangement, although it was not until about the middle of the nineteenth century that the last single-chamber legislature was revamped into the traditional model. By the beginning of the twentieth century a considerable amount of support was to be observed in favor of the unicameral system and it seemed that Kansas might actually establish such a legislature. Then World War I came along to distract attention from routine affairs, with the result that the unicameral movement suffered a severe setback. However, after times had become somewhat normal the sentiment again surged forth and Nebraska decided to introduce a single-chamber legislative body.

The bicameral legislature has so firmly entrenched itself in the American political scene that it is almost taken for granted by the rank and file of the people. The very acceptance of this form by all of the states for almost a hundred years and by all of the states except Nebraska at present may be regarded as an impressive argument in its favor. This system follows, of

**Arguments
for the Bi-
cameral
System**

¹ Professor R. V. Shumate expresses the role thus: "But even a partial enumeration of the functions which are still performed by the states should convince an objective student

course, the pattern which has characterized the national legislative branch since the very beginning. It is supposed to permit broader representation than is possible under a unicameral arrangement; moreover, it embodies the doctrine of checks and balances which is ingrained in many American political philosophies.

Most of the arguments in favor of the unicameral system arise out of experience with the bicameral plan.¹ It is declared that the latter in reality does not involve broader representation because there is little actual basis for such a duality in the states. In the national government the Senate gives recognition to the individual states, while the House of Representatives is primarily based on population: thus various interests are taken into account and domination either by the more populous states or the numerous small states is ruled out. However, there is no unit of government within a state that can be regarded as sufficiently outstanding to warrant representation in an upper house, although the county is sometimes given greater consideration in laying out districts for the election of senators than in the case of representatives. Moreover, a provision is sometimes set up which gives urban areas their fair share of seats in one house, but limits a single metropolitan area to a definite number of places or a certain proportion of seats in the other.² But in general there is little difference between the senate and house on the score of representation. Any one who has had experience in a legislative session knows that the bicameral system sets up two barriers to be hurdled and that a bill may go over one hurdle but fail to get over the second. Of course, the time element enters in here to a considerable extent—many bills might be accepted by the second house if they ever came to a vote, but adjournment comes before such an opportunity presents itself.

Arguments
for the Uni-
cameral
System

To what extent two houses make for more careful consideration of legislative proposals it is difficult to determine. No one can doubt that all too much objectionable legislation manages to get enacted under

that the state legislature is as important now as it ever was, and that it will remain important as long as we retain even a vestige of the federal system." See his article "A Re-appraisal of State Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 196, January, 1938.

¹ These are discussed in Alvin Johnson, *The Unicameral Legislature*, University of Minnesota Press, Minneapolis, 1937.

² Large cities are notoriously underrepresented in state legislatures, particularly in one of the two houses. New Jersey, Georgia, New York, and California may be cited as examples of states which permit grave discrimination.

the bicameral system. The passage of contradictory legislation in a single session does not suggest any large amount of responsibility or familiarity even with what transpires. Occasionally a second chamber actually serves to hold up important legislation that is desired by the majority of the people. The unicameral setup would not prevent the former confusion, but it would rule out a deadlock between two chambers. In theory, at least, the single-chamber legislature would save the people money because only one set of employees has to be maintained, the number of members would in all probability be reduced, and the expenses of two elaborate committee systems would be cut in half. Passing of the "buck" from one chamber to the other would, of course, be obviated, as would deadlocks, domination of one house by one political party and of the other by a rival party, and so forth. It is maintained that public attention would be focused far more sharply on the single chamber, that a superior type of member would be attracted, and that the newspapers would report what goes on more fully. Cities in the United States which once almost invariably had bicameral councils, now seem to get along better with unicameral councils and some of them, such as Chicago and Philadelphia, spend more money than even the average states. The query is raised whether states might not have the same experience with unicameral setups.¹

The first unicameral legislature of the present century convened in Nebraska in 1937. Three sessions and a period of half a dozen years does not permit a conclusive evaluation, but it is possible to make certain observations.² To begin with, it may be stated that the people in Nebraska are not agreed as to the accomplishments or lack of accomplishments of their new system. Some of those who have served as members have been very enthusiastic, while the governor of the state has been distinctly critical, even to the point of speaking against the plan in other states. It is probable that the caliber of members is somewhat higher than under the older arrangement, but this may be due to the novelty.³ Newspaper reporting has apparently been somewhat disappointing, the newspapers

**The
Nebraska
Record**

¹ See Howard White, "Can Legislators Learn from City Councils?", *American Political Science Review*, Vol. XXI, pp. 95-100, February, 1927.

² Professor J. P. Senning of the Department of Political Science at the University of Nebraska has discussed the Nebraska experience, especially the preliminary stages, in his *The One-house Legislature*, McGraw-Hill Book Company, Inc., New York, 1937.

³ Early elections under the commission and council-manager plans of city government have brought forth abler candidates than later presented themselves. This may be the case in the unicameral state legislatures also.

maintaining that much of what goes on is not of great interest to their readers. Some economies have been realized, although the amount is not large in comparison with the total expenditures of the state. The quality of legislation is at least as high as formerly and proponents of the scheme would say distinctly higher.¹

The word that Nebraska had adopted a unicameral system stirred up considerable interest among civic organizations, university professors of the social sciences, and others throughout the land. Organizations were formed in many of the states looking toward the substitution of a unicameral legislature for the traditional bicameral arrangement. In a number of states, including Ohio and California, petitions were widely circulated for the purpose of securing action in this direction.² The international situation has served to focus attention on other more pressing matters and for the time being there is less activity among the advocates of this reform, much as happened during World War I. Whether the interest will survive the national emergency and produce action in other states remains to be seen.

The Future
of Unicam-
eralism

MEMBERSHIP

There is no uniformity among the states so far as the size of the general assembly is concerned.³ Perhaps with as great a diversity in population as is to be observed, this should not be expected, but it is somewhat strange that populous states sometimes maintain smaller legislatures than their more sparsely inhabited neighbors. Thus New York, with approximately 13,000,000 people, has a lower legislative chamber of 150 members,⁴ while Massachusetts, with less than half as many people, has more than 300. The smallest senate is to be found in Delaware and numbers only 17; the largest is in Minnesota and includes 67 members; the average senate has 38 members. The lower houses vary even more widely in size. Delaware and Arizona see fit to get along with 35 representatives each, while New Hampshire, at the other extreme, has more than 400—440 to be

Size

¹ See the statements on this subject in E. C. Buehler, ed., *Unicameral Legislatures*, Noble & Noble, Publishers, Inc., New York, 1937; and H. B. Summers, comp., *Unicameralism in Practice*, The H. W. Wilson Company, New York, 1937.

² The movement has been more or less active in more than twenty states.

³ A table showing sizes of the various legislatures for 1940 will be found in the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 85.

⁴ A proposal was pending in 1942 to increase this number.

exact in 1940. Many lower houses run from 75 to 150 in membership. There is no fixed size that may be laid down as desirable for every state. Something depends upon the type of local government; the diversity of interests among the people may be considered in determining the number of seats. In general, it is the consensus of opinion that legislative bodies in states tend to be unduly large, though in most cases their unwieldiness is not pronounced.

As a rule, members of legislative bodies in the states are nominated by one of the forms of direct primary,¹ though in a few states the Method of convention is still employed for this purpose. Interest may Selection be great and a half dozen or more candidates may present themselves for designation in each of the parties, but it is not at all uncommon to find districts in which the nomination is more or less bestowed by default on a candidate. The political organizations frequently put up informal slates which include members of the legislature and this makes it difficult in some places for an independent candidate to make an impressive showing. In the states of the South where the Democrats have a monopoly the actual choice is made at the primaries and the final election is little more than a formality. However, in most states the division among the parties is such that it is not possible to determine the exact composition of a new legislature until the votes cast in the general election have been counted. A plurality is ordinarily regarded as sufficient to elect.

Legislators are usually chosen to represent districts within a state. These may be based on such local governments as townships and Apportion- counties or they may be laid out with little reference to these ment divisions, but it is customary to pay at least a reasonable amount of attention to county lines.² Both single-member districts and multiple-member districts are to be encountered, with the latter usually, except in Illinois, limited to urban areas. Separate districts are provided for senators and representatives because of the different numbers to be elected. Each district, if of the single-member variety, is supposed to have substantially the same number of inhabitants, but in reality there is a great deal of variation. Urban sections are often discriminated against to the point whether they may have distinctly less than the proportionate representation that their popula-

¹ For a fuller discussion of the direct primary, see Chap. 10.

² For a table showing apportionment requirements of the various states, see the *Book of the States, 1941-1942, op. cit.*, pp. 94-96.

tions would seem to entitle them.¹ Cook County (Chicago), Illinois, with more than half of the population of the state, elects 19 out of 51 senators and 57 out of 153 representatives, while New York City, with some 55 per cent of the population of the state, has 23 out of 51 senate seats and 62 out of 150 assembly seats.² Essex and Hudson counties in New Jersey, with approximately 40 per cent of the entire population, are apportioned less than 10 per cent of the senators in contrast to 13 counties with one-fifth of the population which hold a majority in the state senate. Fulton County, Georgia, including Atlanta with more than 300,000 inhabitants, is entitled to 3 representatives; but 9 counties, with a combined population of less than 40,000, get 9 members of the Georgia House of Representatives. Rhode Island, California, South Carolina, and Connecticut are among the states which ignore the basic principles of equitable apportionment.

The shortcomings of the traditional method of electing members of state legislatures are reasonably serious. Not only is there the discrimination against urban areas, but even rural inhabitants may find themselves with distinctly less representation than they are entitled to on the basis of their numbers because of gerrymandering or the giving of representatives to every county irrespective of population. Minority parties discover that they may poll almost as many votes as the majority party, but actually elect only a small fraction of the members of the general assembly. Proportional representation has been proposed as the most practical method of handling the problem,³ though it has been blamed by Professor Hermens for many of the ills of Europe as well as some of the weaknesses of New York City, Cincinnati, and the small number of other cities which use it.⁴ Two general types of "P. R.," as proportional representation is usually designated, have been developed: the List system and the Hare system. The former is the European variety,

Proportional Representation

¹ See David O. Walter, "Reapportionment and Urban Representation," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, pp. 11-20, January, 1938.

² These are 1942 statistics. A reapportionment measure introduced in the legislature of New York in 1942 may change the numbers.

³ See, for example, C. G. Hoag and George H. Hallett, Jr., *Proportional Representation*, rev. ed., National Municipal League, New York, 1940; J. P. Harris, "Practical Workings of Proportional Representation in the United States and Canada," supplement to *National Municipal Review*, Vol. XXIX, May, 1930.

⁴ See his *Democracy or Anarchy? A Study of Proportional Representation*, Journal of Politics, Notre Dame, Ind., 1941.

while the latter is the type used in the cities of the United States which have seen fit to adopt this system.

The List system gives open recognition to political parties, permitting them to put up slates of candidates which appear on the ballot.

The List System Each party is rewarded with seats on the basis of the percentage of votes polled in the election; thus a party whose supporters account for 30 per cent of the total vote would receive three out of ten positions if that number of seats were being filled, a party with 20 per cent would be entitled to two positions, and so forth.

The Hare system is more complicated, but it is regarded as superior by most P. R. advocates in the United States. Instead of extending

The Hare System recognition to political parties it seeks to encourage voting on the basis of economic, social, racial, and other types of interest, though it has by no means put an end to party candidates. Each voter is given only one vote, but this vote is transferable, the principle being that no vote is to be thrown away and that every voter is to help elect one officer. Thus if the first choice of a ballot cannot help elect, the second choice is counted; if that is impossible, then the third choice; and so on down to the last choice, though it be the seventh or eighth. After the votes have been cast, the ballots are taken to a central counting place and a tabulation made of their number. A quota is then computed by dividing the total number of valid ballots cast by the number of positions to be filled plus one and taking the next highest number. Thus if there are 100,000 valid ballots and 9 positions to be filled the quota would be 100,000 divided by 10 or 10,000 plus 1 which is 10,001. First choices of voters are of course counted at the outset and any candidate receiving the quota is declared elected, but it is improbable that first-choice votes will elect more than one or two candidates and perhaps not a single one. If any candidates have more than a quota of first-choice votes, the surplus is taken and counted on the basis of second-choice votes. Then the process of dropping the weakest candidates is started and their ballots are redistributed on the basis of second-, third-, fourth-, or lower choice votes. Eventually the proper number of candidates will have received the quota or the list of those elected and those still in the running will total the number of positions. At first sight this system seems excessively complicated and there are many confused persons, who account for as many as 20 to 30 per cent spoiled ballots in the first elections. However, it does not require long to accustom voters to the

new techniques and the bringing out of a voting machine for this form of voting is expected to make spoiled ballots impossible.¹ Under the Hare system any group, whether it be political, social, religious, economic, or racial, can elect one representative to a legislative body if it controls as many votes as the quota. It may be inquired how the quota will be known before the voting is completed. New York City handles that by setting up a quota of seventy-five thousand by law and this serves notice on the people beforehand, though it makes the exact size of the council somewhat uncertain—it may be twenty-one, twenty-five, twenty-six,² or some near-by number, depending upon how many turn out to vote.

At one time it was the custom to elect members of legislatures for a single year and New Jersey still clings to the habit of annual elections for those who sit in its lower house. However, representatives now ordinarily hold office for two-year terms, while Terms more than half of the states at present choose their senators for four-year terms. A few states, including Alabama, Louisiana, Maryland, and Mississippi, have gone so far as to give members of their lower chambers four-year terms; a much larger number of states continue the older practice of two-year terms for senators.³ New Jersey has the odd arrangement of three-year terms for senators.

Reelection is permitted and in many cases is actually granted, although there is no uniformity among the states or even within a single state in this matter.⁴ In some states the principles Reelection of Jacksonian democracy even now find a warm welcome, with the result that there is a feeling that no one should hold a seat in a general assembly more than a brief period. The practice in these states emphasizes the importance of passing the honors around so that every citizen of substance may get his turn at some office. Other states are more cognizant of the bearing of legislative experience upon a superior legislative record and consequently reelect both representatives and senators again and again. In 1937 every senator in Maryland had had previous legislative experience and 93 per cent of the representatives fell into the same category. In the same year Illinois could point to 94 per cent of her senators and 75 per cent of her representatives as

¹ Such a voting machine has been perfected and is about to be manufactured for actual use.

² The number was first twenty-six; it dropped to twenty-one in 1939.

³ Thirty-one states provide four-year terms for senators.

⁴ See Charles S. Hyneman, "Tenure and Turnover of Legislative Personnel," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, pp. 21-31, January, 1938.

having had previous legislative experience, and New York reported 90 and 78 per cent respectively on the same basis. At the other extreme stood Georgia, with only 35 and 47 per cent respectively of her legislators old hands at the game, and New Mexico, with but 42 and 31 per cent of her senators and representatives with previous legislative experience.¹

It is hardly necessary to point out the importance of experienced legislators under a system such as exists in the states of the United States. The business entrusted to a legislature is often highly complicated and requires far more than the novice can offer. The rules tend to be involved; the pressure of time is tremendous in many states that have strictly limited sessions. Even experienced members find it difficult to function efficiently under such circumstances, while beginners can scarcely do more than observe what is going on. The average record of all the states is reasonably good—in 1937, 70 per cent of the senators and half of the representatives² had had other legislative experience, but individual states presented a far from satisfactory picture.

The formal qualifications which are laid down by the states for members of the general assembly are largely nominal in importance. In every case a minimum age of twenty-one is stipulated and in some instances, especially in the case of senators, minimum ages of twenty-five or thirty years are required. Residence of at least one year is asked; citizenship in the United States is, of course, always specified. Persons who have been convicted of felonies may be disqualified. In a few instances ability to use the English language is specifically demanded, although in New Mexico a considerable number of the legislators understand only Spanish and hence have to have interpreters at hand. Needless to say, there are more arduous qualifications which are imposed by custom and usage.³ Lengthy residence is almost taken for granted in most states; political backing is certainly very helpful if it is not an absolute qualification. Additional illumination will be thrown on this topic a little later when we examine the personnel of certain legislatures.

¹ See Henry W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 5, January, 1938.

² See H. W. Toll, *op. cit.*, p. 6.

³ For an interesting article on this point, see John C. Russell, "Racial Groups in the New Mexico Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 62-71, January, 1938.

There is a disposition among members of state legislatures to ask for sympathy on the ground of low compensation. Several writers have used the financial allowances made to lawmakers as an **Compensation** explanation of the poor quality of work turned out, particularly suggesting that it is responsible for the unimpressive record of previous legislative experience to be observed in some states. A casual glance at the compensation allowances will indicate that the direct payments are not strikingly generous. Illinois leads the list, paying a biennial salary of \$5,000 and 5 cents per mile travel allowance. New York comes next with \$2,500 per year; Ohio follows with \$2,000 per year. Pennsylvania provides \$3,000 salary for ordinary sessions every two years, an extra \$500 for special sessions, \$150 for postage, and 5 cents a mile round trip once each week; California and Wisconsin each offer \$2,400 in salary for a two-year term. At the other extreme are such states as Kansas and Oregon, which allow their legislators only \$3.00 per day during the period that the legislature is actually in session and New Hampshire which pays \$200 per term. It may be added that twelve other states pay \$4.00 or \$5.00 per day during a legislative session.¹ The expenses incident to living in a state capital may exceed the compensation paid by many of the states unless the legislator is willing to take a room in a boarding house and restrict himself to the most simple tastes. Even the more generous salaries may not take into account the personal sacrifice which a member has to make in connection with his private business affairs.

Nevertheless, after due commiseration has been extended to the gentry who occupy seats in our state legislatures, it is probable that the significance of the problem has been overemphasized. Oregon, which pays only \$3.00 per day, has approximately the same rate of turnover among her legislators as Pennsylvania which is fairly generous and actually is superior to Ohio which pays third from the highest salary.² It is perhaps true that a state should be humiliated to pay lawmakers at so modest a rate in light of the amounts paid out for other purposes no more important; yet it is difficult to relate compensation to work performed. If members cannot afford to devote the time required for the salary paid, it would

**Relation of
Salary to
Turnover
and Ability**

¹ These include: Alabama, Connecticut, Idaho, Maryland, Missouri, New Mexico, North Dakota, Rhode Island, South Dakota, Tennessee, Utah, and Washington.

² The record of Oregon as of 1937 was 70 per cent of experienced members in case of senators and 52 per cent for representatives. Pennsylvania in the same year reported 68 and 57 per cent respectively, while Ohio could point to only 53 per cent in both cases.

seem that they would not seek reelection. Doubtless there are many individual cases where this actually happens, but in general salary does not appear to determine the rate of turnover. To what extent it influences the quality of the members it is difficult to say. Are honest citizens discouraged from serving, while rogues who are willing to sell their support to the highest briber are encouraged to seek seats? No one can speak with absolute authority on this point, although many people have expressed opinions.

If one can take a tip from social psychology, it would seem that the prestige attached to legislative membership is fully as important as the monetary compensation involved. It is not difficult to find men who devote large amounts of time to service clubs, fraternal organizations, churches, educational projects, professional organizations, and many other social groups, even though no direct salary is attached to this labor. In certain cases there is, of course, indirect financial reward forthcoming, but that is equally true in the case of many legislators who find legal business and other profitable contacts resulting from their public service. But in many cases there can be little or nothing in the way of the profit motive involved: these men give their time and energy because they receive prestige or are civic-minded. Professor Leonard White has written of the prestige value of public employment ¹ and shown that this social attitude has a great deal to do with the attractiveness of government jobs. To what extent, it may be asked, is prestige attached to legislative service? Considering the widespread distrust which has been associated with state legislators for something like a century, it might be supposed that there would be very little of this recognition. A perusal of the newspaper editorials as a legislative session comes to a close might also cast great doubt on any prestige value, since it is commonplace to refer to the shortcomings of the general assembly in the most uncomplimentary terms as well as to express great relief that the tribulation will soon be over because of approaching adjournment.

Despite the suspicion of John Public which has been crystallized in numerous prohibitions written in state constitutions and the ridicule of the press, it seems probable that there is still considerable prestige attached to legislative service. The ordinary

The Prestige Value of Membership

Divergent Attitudes

¹ See his *Prestige Value of Public Employment in Chicago*, University of Chicago Press, Chicago, 1929, and *Further Contributions to the Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1932.

legislator does not read learned treatises which deal with the deterioration of the general assembly; nor does he necessarily take too much to heart what the newspapers print. He is far more conscious of the attitude of the people at home with whom he associates daily, of the agents of the pressure groups which seek his support, and of the public officials at the state capital who desire generous appropriations. They are apt to treat him with respect to say the least and in many cases will bestow the most fulsome praise. It is in the circles of the successful business and professional men that the legislature is made fun of and consequently that prestige value is low. Yet it is from these groups that many recruits are needed for legislative service.

THE PERSONAL BACKGROUND OF LEGISLATORS

The conventional discussion of the legislature confines itself to formal qualifications, organization, and rules of procedure. However, inasmuch as the practice very frequently departs from the formal theory, it is necessary to build up as much of a background as possible if a reasonably good understanding of the legislative process is to be obtained. Some knowledge of the personal background of those who make the laws is frequently helpful in evaluating the actual practice.

Although women have had the suffrage for more than twenty years throughout the United States, they have not been frequently elected to serve as members of state legislatures. Out of 7,512 legis- Sexlators in all of the states in 1937 only 141, or 1.89 per cent, belonged to the feminine sex. This represented a downward trend from the peak year of 1929 when the total ran to 149, although it was 11 more than had held seats in 1935.¹ Considering the energetic work of the League of Women Voters and other groups of women, it is difficult to explain the small number of women legislators.

The typical member of a state legislature is in the neighborhood of fifty years of age. In 1931 the median age of all state legislators was 51.0; in 1933, 49.4; and in 1935, 48.4.² There is some varia- Agetion among the states in this respect, with certain southern states showing a lower age average than the rank and file of the states, but it is clear that the majority of legislators fall in the category designated as "middle-aged." There are usually a small number in the

¹ See Henry W. Toll, *op. cit.*, p. 4.

² See William T. R. Fox, "Legislative Personnel in Pennsylvania," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 34, January, 1938.

twenty-one to twenty-nine age group, a larger number in the thirty to thirty-nine group, and then a much larger number in the forty to forty-nine and fifty to fifty-nine age-groups; after sixty the number tapers down and after seventy there are only a few again. With the median age about fifty, it is not to be expected that an ordinary general assembly will be particularly adventuresome, exuberant, or progressive. Indeed one wonders how many of the members stand up under the strain which characterizes the closing weeks of the legislative session.

The great majority of legislators have had long association with the states which they serve; indeed the majority are natives of that state.

Nativity Samplings taken of recent legislatures reveal that 87 per cent of the members of the South Carolina lower house were natives of that state; that 62 per cent of the members of both houses in New Hampshire were natives;¹ and that 74 per cent of the representatives of Indiana fell into the same class. Even in those cases where members are not natives, they tend to come from a near-by state. Thus 10 per cent of the South Carolina House of Representatives hailed from North Carolina, Virginia, and Georgia, making a grand total of 97 per cent from South Carolina and its immediate environs. In New Hampshire the senators who were not native sons claimed Massachusetts, Rhode Island, and Canada as birthplaces. Furthermore, it may be pointed out that with few exceptions those who cannot claim to be native sons can point to lengthy residence² within the borders of the state in whose legislature they serve. This impressive association throughout a lifetime or at least many years with a single state is reflected in many of the attitudes of legislators.

More and more of the members of state legislatures are products of colleges and universities, though there are still large numbers who have had comparatively little formal education. A study
Education of legislators in the state of Pennsylvania extending from 1881 to 1935 revealed 16.3 per cent reporting college training at the beginning of the period; 20.6 per cent in 1891; 20.1 per cent in 1901; 25.3 per cent in 1911; 36.9 per cent in 1921; 34.1 per cent in 1931; and

¹ See A. W. Edson and R. C. Hardy, "The New Hampshire Legislative Session of 1925," *American Political Science Review*, Vol. XIX, pp. 773-784, November, 1925.

² In the California legislature of 1937 the median number of years spent in this state by nonnatives was as follows: senators, twenty-eight, assemblymen, twenty-five. See D. E. McHenry, "Legislative Personnel in California," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 51, January, 1938.

38.0 per cent at the end of the period.¹ In Missouri a survey showed that 57 per cent of the legislators during the years 1901 to 1931 had enjoyed some college training, that an additional 13 per cent had attended high school, and that 30 per cent reported only a common-school education.² In the Indiana General Assembly of 1937 just over half reported some college or university training, while in California 65 per cent of the members during 1927-1937 could claim some college background. A recent South Carolina lower house had 50 per cent college graduates and an additional 23 per cent with some college training, but at the other extreme was the New Hampshire legislature of 1925 which included only 19 per cent college-trained men and 46 per cent of those with no more than common-school education.³ Considering the complicated matters which are entrusted to a legislature, it is not too reassuring to discover the limited formal educations which large numbers of members must confess.⁴

It is widely believed that most members of state legislatures are lawyers, but this is not borne out by the facts, although the number of lawyers is large. In 1937 approximately 1,800, or 24 per cent, of the more than 7,500 legislators were classified as lawyers.⁵ This includes the "constitutional lawyers" who are attorneys by courtesy much as are "colonels" in Kentucky, the professional politicians who have long forgotten the little law that they ever knew, the realtors and insurance agents who do a little law on the side, and others who are not closely associated with the legal profession. In individual states the ranking of lawyers may be either much higher or distinctly lower. For example, there were only 12 lawyers out of 421 members of the New Hampshire lower house a few years ago.

The proportion of farmers in state legislatures is fairly large and is equaled only by that of lawyers. Throughout the country it is esti-

¹ See William T. R. Fox, *op. cit.*, p. 37.

² See Howard B. Lang, Jr., "They Legislate for Missouri," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, p. 41, January, 1938.

³ See Dean E. McHenry, "Legislative Personnel in California," *ibid.*, Vol. CXCIV, p. 47, January, 1938.

⁴ A sample survey of sixteen states by the American Legislators' Association showed that 46 per cent of state senators were college graduates during the years 1931-1935 and that an additional 11 per cent had attended colleges. In the lower houses 31 per cent had college degrees and an additional 11 per cent had attended college. In both houses 34 per cent were college graduates. See *The Reference Shelf*, Vol. XI, pp. 65-67.

⁵ See M. Louise Rutherford, "Lawyers as Legislators," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, p. 53, January, 1938.

mated that about one-fourth of the members are farmers,¹ though in industrial states the percentage is ordinarily very much less. In 1935 farmers constituted only 7.4 per cent of the legislators in Pennsylvania and only 7 per cent in the states of New York, New Jersey, and Pennsylvania.² In Missouri about one-third of the members of the lower house were farmers during the years 1901-1931,³ while in California just over 16 per cent of members of both houses during 1927-1937 were classed in this occupation.⁴ However, in Iowa, Nebraska, and certain other states the proportion is distinctly higher, running at times to approximately 50 per cent. In this connection it must be remembered that not all of those who report themselves as farmers actually engage in farming for a living. In agricultural states a premium is often placed upon the label "farmer" and hence all of those who can possibly qualify through hook or crook will call themselves "farmers." Thus a small-town banker, a real-estate man, a merchant, and others who own farm land may classify themselves as farmers. Nobody can dispute the influence of this occupational group in those state legislatures which have them in large numbers; if they cannot control the positive program which they have drafted in every case they can certainly block anything that they oppose. It may be added that they often have the strength to put through any laws that they regard as desirable. Even in states which have important industrial interests, the influence of the farmer in the general assembly is often great and sometimes controlling.

Aside from the farmers and the lawyers no single occupational group is ordinarily outstanding in a state legislature, although if the various businesses are grouped together they can show a strong contingent. Merchants held 14 per cent of all legislative seats throughout the United States in 1935, while real estate and insurance claimed 5 per cent, manufacturing 4 per cent, and construction and maintenance 3 per cent.⁵ The interests of these business groups is frequently so diverse that they are not agreed on many important measures; consequently they lack the cohesiveness which is to be observed among the farmers. Organized labor frequently has several representatives in those states which are

¹ See William T. R. Fox, *op. cit.*, p. 36.

² *Ibid.*

³ See Howard B. Lang, Jr., *op. cit.*, p. 42.

⁴ See Dean E. McHenry, *op. cit.*, p. 48.

⁵ See William T. R. Fox, *op. cit.*, p. 36.

Agricultural Back-ground

Other Occupational Representation

industrial in character, though it has not fared so well as might be expected. Journalism, especially of the small county-seat variety, often has several seats; medicine, the church, and teaching not infrequently hold a seat or two, particularly in the eastern states. In general, it would seem that the law and agriculture are both distinctly more generously dealt with than can easily be justified; wider and more equitable occupational representation would be desirable in most of the states.

As a rule, members of state legislatures report loyal support of religious organizations. Out of twenty-four senators in a recent New Hampshire legislature twenty-three claimed some religious affiliation,¹ though in one instance it was described as "follower of the Golden Rule." Forty out of forty-six senators reporting in a recent Indiana General Assembly listed definite religious affiliations, while only six out of one hundred members of the lower house admitted that they were attached to no church. Conventional religious organizations ordinarily draw far more heavily than those which are looked at askance by some citizens: thus forty-four, or approximately half, of the representatives in a recent Indiana General Assembly indicated support of the Methodist, Presbyterian, Christian, and Baptist churches. The strength of the Catholic Church varies, but it is often comparatively great. In a recent New Hampshire lower house there were ninety-nine Catholics in contrast to sixty-six Congregationalists, the next largest group, while in that former stronghold of the Ku Klux Klan, Indiana, the Catholics in the lower house in 1937 claimed only one less member than the Methodists. It may be surmised that the affiliation in many instances is largely nominal, but nevertheless, the fact that so large a proportion report some connection seems to be significant. Even where the sect is a strange one, such as New Jerusalem Evangelist, there seems no hesitation in listing it in the biography which appears in the official *Manual* or *Blue Book*.

Fraternal and civic affiliations of legislators are quite as impressive as religious. In the Pennsylvania General Assembly of 1935-1936, 120 out of 258 members listed 285 affiliations as follows: 41 veterans, 130 fraternal, 36 business or service clubs, 10 farm groups, 17 civic associations, 20 professional, 13 labor unions, and 6 racial or hyphenated American.² Forty-four senators in

¹ A. W. Edson and R. C. Hardy, *op. cit.*

² See William T. R. Fox, *op. cit.*, p. 38.

the Indiana legislature of 1937 reported membership in 70 organizations as follows: 22 Masons, 12 Elks, 10 Knights of Pythias, 7 Greek letter, 4 Eagles, 3 Odd Fellows, 3 American Legion, 2 Red Men, 2 Knights of Columbus, 1 Woodman, 1 Lions Club, 1 Rotary Club, 1 Boy Scout, and 1 Chamber of Commerce. Forty-five of the 100 members of a recent Indiana lower house and 154 out of 421 representatives in New Hampshire belonged to the Masonic order. In California approximately one-third of the representatives and one-fifth of the senators during the years 1927-1937 were veterans of a foreign war.¹ The number of Rotarians, Kiwanians, and other service club members is smaller than might be expected, considering the claim of these clubs to enroll most of the leading urban citizens.

A legislature may appropriate public funds to the extent of tens and even hundreds of millions of dollars;² moreover, it has the power to enact statutes that may be worth millions of dollars to private interests. Under these circumstances it is very important that every member be like Caesar's wife, "above suspicion." Even a minority of corrupt legislators may cause a state untold trouble, since a comparatively small group may hold the balance of power and determine what shall be done. To what extent dishonesty prevails in a single general assembly it is difficult to ascertain; it is much more difficult to lay down any general conclusion that would hold true in the case of all legislatures throughout the United States. Theodore Roosevelt fought with the "Black Horse Cavalry"³ which had the New York legislature so completely under its control that it established a system of selling legislative favors to those who were willing to meet its price. This gang managed to fasten itself upon the people of New York for more than a decade and undoubtedly caused millions of dollars of loss as well as general inefficiency in public affairs. Other cases somewhat less notorious or at least well publicized might be referred to, for at times most of the states have had their tribulations. There is a belief in many circles that dishonest legislators are for the most part associated with the past, but unfortunately this is hardly the case. The Indiana General Assembly of 1937 had enough grafters among its members that a regular scale of prices was drafted for quotation to those who sought improper favors. An unimportant

**The Hon-
esty of Leg-
islators**

¹ See Dean E. McHenry, *op. cit.*, p. 52.

² New York State spends approximately \$300,000,000 per year.

³ See his *Autobiography*, rev. ed., Charles Scribner's Sons, New York, 1925, pp. 70-73.

bill could be conveniently "misaid" for as little as \$10; more important favors were listed at several hundred dollars each; the top prices ran into the thousands. But almost anything could be purchased at a price. How many bills were actually stolen from the files cannot be said, but some were missed even after they had been duly passed by both houses of the general assembly.¹

A keen observer who has been associated with legislatures over a period of more than a quarter of a century declares that at any given time it is safe to say that from one-fifth to one-fourth of the members are willing to sell their votes. This does not mean that they are always corrupt in their conduct, but it does imply that they cannot be depended upon to stand up under great temptation. Certain members, on the other hand, are rampant in their grafting and welcome every opportunity to profit at the expense of the public; if everything goes well they may pocket \$10,000 or more during a single session. It might be supposed that the corrupt-practices laws would prevent such conduct on any considerable scale, but it is difficult to prove guilt even when there is a courageous prosecutor to handle the case. In the majority of instances there does not seem to be any attempt on the part of the law-enforcing officers to control this type of conduct—perhaps because it is politically inexpedient, again because the prospects of success are so slight.

There are many other things that it might be helpful to know about those who make our state laws and authorize the expenditure of state funds, but these are not of the type to be listed in connection with the biographical data which many legislatures prescribe; nor can they be readily obtained from casual observance of a legislature in action. Some of these are probably far more significant than the information which is reported; for example, what is the general attitude of a legislator toward his office? Is he in the general assembly to carry out the orders of a political boss or a very selfish pressure group? Is he there to have a good time? Is he there because of a political accident? Does he have any very definite ideas in regard to state problems or is he content merely to occupy a seat? Does he work hard at his job, attempting as best he can to ascertain whether proposed legislation is for the best interests of the state? The answers to these queries would make it possible to judge the worth of

Other
Character-
istics

¹ See the files of the Indianapolis papers for the period February-March, 1937, for additional details of the system which prevailed.

American state legislators far more objectively than can be done at present.

The newspapers often hold legislatures and their members up to ridicule—even as sober a paper as the *New York Times* came out not long ago with the following headline “Georgia Hails End of Its Legislature. Body, Called Most Incompetent in Forty Years, Applauded for Adjourning.”¹ Alfred E. Smith implies in his autobiography that he was one of the rare members of the lower house of the New York legislature to take their duties seriously;² he spent his evenings reading bills and attempting to secure information from reliable sources as to the merit of proposed legislation while his colleagues loafed, gambled, and amused themselves after the daily sessions came to an end, content to take their cue from a pressure group or the party leaders. Charles Kettleborough, for a quarter of a century closely observant of the legislature in Indiana which is noted for its practical politics, arrived at a very different conclusion: “My experience with eleven sessions in Indiana has convinced me that an average legislature is not only a very able but a very serious body of public servants and that they are entitled to indulge in the nonsense they do to maintain their poise and good humor and equilibrium.”³

Whether one would agree fully with Mr. Kettleborough or not, it is certainly fair to say that the reputation of legislators in the highways and byways where people congregate is distinctly better than the caustic jibes of critics would indicate. Even where the product is lacking in quality, it may be not so much the fault of the members of the legislature as a result of the inadequate time permitted, the unreasonably heavy burden imposed, and the worn-out character of some of the governmental machinery.⁴ Even if there are inevitably a number of legislators who are out to make as much money as they can by fair means or foul, it is a very rare if not unheard of state of affairs for them to constitute anything like a majority. Under these circumstances it is fairer to judge the legislature on the basis of the caliber of the honest and conscientious members.

¹ Quoted from W. Brooke Graves, *American State Government*, D. C. Heath and Company, Boston, 1936, p. 248.

² See his *Up to Now*, The Viking Press, New York, 1929, Chaps. 5-8.

³ In a letter to Professor Graves, November 1, 1934.

⁴ An illuminating treatment of this subject is to be found in W. Brooke Graves, *op. cit.*, pp. 244-249.

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CHAPTER XL

THE LEGISLATURE IN ACTION

SESSIONS

AT ONE time it was customary for legislatures to convene every year, but that has long since ceased to be the rule. Indeed there are only three states in which annual sessions are still provided: New York, New Jersey, and Rhode Island—even Massachusetts and South Carolina which long clung to the old tradition have recently gone over to the biennial plan. The legislatures of forty-five states meet every two years in regular session,¹ though until recently Alabama made provision for regular sessions only every four years. In forty-five states legislatures convene in January, while in Alabama, Florida, and Louisiana the time is set up to April and May respectively.

The distrust which has been generated by legislative action in certain states has led to constitutional limitations on the duration of regular sessions; nevertheless, there are still twenty-three states which permit their lawmaking bodies to meet as long as they deem necessary. The twenty-five states which are not willing to grant discretion as to length of session to their legislatures are not agreed upon how severe a limitation shall be imposed. Two go so far as to set the maximum at 40 days; one state specifies 61 days; two, 90 days; and one, 150 days. The most common practice is to set the limit at sixty days—nineteen states hold to this course. The average of the limited and unlimited sessions runs to approximately ninety days at present.²

The limitations which are imposed by twenty-five states on the length of regular legislative sessions may or may not work undue hard-

¹ These legislatures do not meet the same year; forty-one meet in odd-numbered years and four in even-numbered years. A table showing length of sessions, and so forth, will be found in *The Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 87.

² See Henry W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 1, January, 1938. In 1937, forty-three sessions averaged ninety-one days.

ship. The 150 days permitted by Connecticut is reasonable enough, for it is hardly to be expected that the legislature of that state could under ordinary circumstances wisely spend more than that time on its deliberations. Maryland and Minnesota, which set the maximum at ninety days, also cannot be fairly considered unreasonable unless a very unusual situation presented itself.

Problem of
the Limited
Session

The other twenty-two states are in a different category. It cannot be maintained that two months every two years is always an inadequate time for a legislature to complete its labors, but it is certainly very frequently not sufficient. It requires several weeks to get the legislative machine operating in such a manner that bills are ready to be voted on; moreover, political psychology tends to favor delayed action in many instances.¹ The result is that the legislatures of many states come to the last week of their limited sessions with very little accomplished in the way of statutes finally enacted. Inasmuch as there are many bills and resolutions that simply have to be passed in order to keep the government going, the congestion during the closing days is almost beyond description. Legislative rules have to be suspended; deserving bills have to be shelved to make way for those which are politically expedient; the average member becomes so befuddled that he cannot begin to keep track of what is done. The result is that two or three conflicting bills may be passed; freak bills get through; very important bills find themselves passed without clauses which make it possible to enforce them; and the governor is confronted with such a mountain of bills and resolutions at the very end that it is literally impossible for him to give careful consideration to those which are not particularly demanding. One may sympathize with the trials and tribulations which some states have suffered as a result of irresponsible legislatures, but the remedy which has been adopted often involves so many evils that it is questionable how much good has been accomplished. It is difficult to deny that a considerable part of the weakness

¹ Mr. Garland C. Routt, of the Council of State Governments, has pointed out that the congestion at the end of a session is not entirely due to the inability of the legislature to transact business more promptly, although this enters in. But in many instances he maintains that legislators are uncertain as to what is politically expedient, while in other instances they prefer to have their measures pass during a period when so much else is being done that the limelight will not be focused on their endeavors. These points were made in an address delivered to the Midwest Conference of Political Scientists held at Pokagon State Park in Indiana in May, 1941. See also his "Interpersonal Relationships and the Legislative Process," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, pp. 129-136, January, 1938.

commonly ascribed to certain legislative bodies must be attributed to the insufficient time permitted for transacting business.¹

The constitutions of California and New Mexico provide for bifurcated or split sessions. Realizing that it is desirable to permit time for considering the bills which are introduced in such large numbers as well as to sound out popular sentiment, these states contemplate an arrangement under which the legislature meets for an initial period during which bills are introduced and preliminary business is attended to. Then a recess of several weeks is taken, during which the members return to their homes, determine the attitude of their constituents on pending bills, and otherwise inform themselves as to what final action should be taken on the proposals which have been made. At the conclusion of this period the legislature convenes again and proceeds to pass those bills and resolutions which it regards as desirable. In California the split session is regularly used by the legislature, but it is not popular with either legislators or scholars. It causes a prerecess rush somewhat like the preadjournment rush at the end of a session and has not produced a higher quality in laws passed.² There seems to be strong sentiment to repeal the amendment to the state constitution which requires split sessions.³

Recent years have witnessed numerous special sessions of state legislatures; indeed during the years 1930-1937 Henry W. Toll of the Council of State Governments concluded that they were "more frequent than during any similar period in the history of the Nation."⁴ During that period at least 216 special sessions were held, each covering from one day to four months or more. In 1929, which marks the dividing line between the predepression days and the difficult years of the 1930's, only nine states scheduled special sessions. But in the single depression year of 1933 thirty-five states held forty-three special sessions of their legislatures. The following year twenty-eight states called thirty-eight special sessions, while in 1936 thirty-three states set an all-time high with forty-six special sessions. It may be added that many if not most of these special sessions of 1936 were for the purpose of enacting legislation which would make

¹ Yet limited sessions have their strong supporters. A senator of considerable reputation and experience in a middlewestern state has informed the author that he wholeheartedly approves of the sixty-one day limit in his state.

² For an evaluation, see T. S. Barclay, "The Split Session of the California Legislature," *California Law Review*, Vol. XX, pp. 43-59, November, 1931.

³ New Mexico adopted an amendment providing split sessions in 1940.

⁴ See Henry W. Toll, *op. cit.*, pp. 3-4.

it possible for the states to take advantage of the federal social security program. By 1937 the situation had quieted down and since that time the need for special sessions has been less pressing. Nevertheless, in those states which limit their lawmaking bodies to two months or less every two years special sessions are likely to be fairly common occurrences.

ORGANIZATION

Inasmuch as there is usually a long lapse of time between legislative sessions and the turnover in membership is large, especially in certain states, state legislatures find it necessary to pay more attention to organization than Congress. The national Senate goes on its way year after year with little change in organization unless there is a shift in political control or death creates a vacancy. Even in the national House of Representatives there is likely to be considerable continuity unless a new party displaces the party which has enjoyed majority status. In New York, which continues the practice of holding annual legislative sessions, there is some similarity to the federal system, but that is the exception rather than the rule as far as the forty-eight states as a whole are concerned.

As soon as the election returns have indicated the membership of a state legislature, the leaders of the majority party begin to lay plans for the organization of that body. The state party committee may take a hand in the making of arrangements, usually calling in influential legislators-elect who have had previous experience in the general assembly. It is quite possible that a caucus of the members of the dominant party in the legislature will be held sometime during December for the purpose of discussing officers, committee assignments, and other matters of interest. However, if there has been no shift in party control and many of the old members have been reelected, no definite steps may be taken until the very eve of the convening of the legislature. At any rate a slate of officers is usually in readiness for consideration at the first formal meeting and this is ratified as a matter of course by the assembled members, although it is customary to have a minority slate put up also as notice that the minority party is on hand. During the first session the oath of office is administered to members, seats are assigned, and other preliminaries are disposed of. Shortly after convening, the governor is invited to address a joint assemblage of the members of the two houses or, if he

prefers, to send in a message to be read by the clerks of the two houses.

State legislatures have substantially the same types of officers that are to be observed in Congress. The lower houses are presided over by **Officers** speakers who receive their positions because of their leadership in the majority party; as in the national House they do not hesitate to take an active part in the affairs of the chamber over which they preside, even to the extent of using their influence for partisan measures. In all of the states except Oklahoma and Nebraska¹ the speaker continues to name committees, though his counterpart in Washington no longer can do that. Thirty-six of the states have lieutenant governors who preside over the senate, but in twelve cases the senate has to choose a president for that purpose.² It may be added that even where there is a lieutenant-governor it is customary to elect a president pro tempore who takes charge when the former is not present. Presiding officers maintain order during the sessions, recognize those who desire to speak, listen to motions, rule on points of order, and perform the other duties which are commonly associated with a presiding officer. Chaplains, sergeants-at-arms, several varieties of clerks, and other officials carry on the functions which are traditionally expected.

The number of legislative employees is larger than is commonly realized; as a matter of fact there is some reason to believe that it is **Legis-** larger than is actually necessary. The total number of em-
-lative Em- ployees may be as large or larger than the total member-
-ployees ship of the general assembly, even if allowance is made for part-time employment. If all of the different pages and door keepers who perhaps are on the pay roll only a week are included, several hundred persons will find in a legislature a source of employment. Some of these are largely honorary in character; others have a great deal to do. Of course the majority party expects to benefit from most of these jobs, though every member may be permitted to name a page or two who shall serve during a week or so of the session. Most of these jobs carry modest compensation—the most lucrative often pays not more than \$10 per day, but there is always a great demand for them from loyal followers of the party in power. Indeed it is the greediness of

¹ Oklahoma and Nebraska have a committee on committees for this purpose.

² These states are: Arizona, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, and Wyoming.

party workers which explains in large measure the numbers who are employed.

A caucus of the majority members in a legislative body is almost always held immediately before or at the beginning of a new session for the purpose of selecting officers, employees, and committee personnel. Minority members have little control over organization, but they pride themselves on putting up a slate of officers and usually have something to say about the committee assignments of their members. At these early caucus meetings considerable attention is sometimes paid to outlining the general strategy to be followed as well as to the program of legislation which is to be enacted. In general, the work of a state legislature is less political than that of Congress, since large numbers of bills involve local desires or economic interests rather than party concerns. Thus both Democrats and Republicans from rural areas vote for a bill supported by the rural voters, while their colleagues from cities see eye to eye on a measure sponsored by urban interests. This means that the role of the caucus may not be important after the legislature actually gets under way. However, there are times when a majority party will draft a very ambitious legislative program looking toward improving its position; in such cases the caucus is likely to meet frequently to decide on what shall be done and what strategy shall be used. The steering committee appointed by the caucus may have a great deal to do if there is something of this kind on foot, for it has to see that members are on hand to vote and that the plans go according to schedule.

There are several types of committees which are organized by state legislatures. Standing committees are found everywhere and are ordinarily maintained by each house, though six states make more or less use of joint committees which draw their members from both houses. Special committees are named to attend to matters which are of temporary interest; ad interim committees which carry on studies between legislative sessions are particularly important at times.

Much of the actual work of a legislature is carried on by standing committees which are set up to consider bills of various sorts. There has been a trend in the direction of reducing the number of committees during recent years, but there is still room for a good deal of pruning in many states. A few states, including Wisconsin, Nebraska, and Kansas, have brought the number of

The Role of the Caucus

Committees

Standing Committees

committees at least in one house to reasonable proportions—the former had ten senatorial committees in 1937, while the latter had thirteen; Nebraska has sixteen committees in its unicameral legislature. In contrast as of 1937 South Dakota had fifty-three senate committees; Washington fifty-two senate committees; Georgia fifty senatorial committees; Kentucky, Michigan, and Oklahoma each sixty-six house committees; Georgia sixty-one house committees; and Florida sixty house committees. Ten senates had forty or more standing committees in the above year, while nine lower houses had fifty or more standing committees. Needless to say, there are not forty or fifty different categories of bills which are important enough to justify standing committees and as a result, while a few committees have much to do, a larger number find themselves with little or nothing to occupy their attention. In a recent Ohio legislature the house committee on taxation had referred to it 134 bills and the judiciary committee 86 bills; in contrast the committees on libraries, federal relations, and universities and colleges received one, two, and three bills respectively.¹ But members want to be appointed chairman of a committee irrespective of whether it is important or not; moreover, they like to be able to point to membership on numerous committees. Considering that some state houses of representatives have more standing committees than the national House of Representatives, despite their distinctly smaller size, it may not occasion surprise when a single member can report eight or ten committee assignments to his constituents.

Two states have largely abandoned standing committee systems in both houses for joint committees, while four additional states have made some headway in this direction. Massachusetts and
 Joint Committees Maine had thirty and thirty-eight joint committees respectively in 1937, with members drawn from both houses of their legislative bodies; New Hampshire, New Jersey, North Dakota, and Rhode Island had four, six, eight, and six of these committees respectively in the above year. Under this arrangement a single committee, with members drawn from both chambers, considers proposed legislation after introduction and reports to both houses when it has finished its labors. In this way one consideration rather than two is provided; time is saved; representatives of both houses often iron out

¹ See Mona Fletcher, "The Use of Mechanical Equipment in Legislative Research," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 171, January, 1938.

their differences of opinion before a formal vote is taken rather than after. The joint committee system is supposed to confer many of the benefits of unicameralism without necessitating the radical constitutional changes required by that form. It has received generous attention from students of government and has worked out well in Massachusetts where it has had its most extensive use. Nevertheless, despite the arguments that have been advanced in its favor, it has not appealed to many of the states.

It is the custom in many states to set up special committees to study some particular problem during the period between legislative sessions. These may represent only a single house; they may draw members from both houses; or they may include both legislators and persons drawn from the outside. They are ordinarily authorized by resolution and frequently are the pet project of some one member of a legislative body—the author of a resolution usually is automatically appointed to membership and may be made chairman. Needless to say, an appropriation of several thousand dollars generally accompanies the authorization of one of these committees. Some of these committees have been of first-rate importance in gathering together material which has later been made the basis for far-reaching legislation. The Joint Legislative Committee on Taxation and Retrenchment in New York has been active since it was first set up in 1919 and has undoubtedly made a generous contribution to lawmaking in New York.¹ Unfortunately the record of many of these ad interim committees is less bright, though they may have cost the taxpayers thousands of dollars. In a good many cases the main purpose seems to be to provide funds for a junket, to employ a politically deserving person as secretary, or to attract publicity to the sponsor. No serious attempt may be made to study a public question with any care; indeed the employees of many committees are so lacking in training that they could not possibly carry on a valuable study. Even where good work is done, there is no guarantee that any attention will be paid to it. The members of the committee may not be reelected; attention may shift to some other problem; the reports may mold away in the basement of the capitol. The lack of accomplishments of these committees has been mentioned as an argument in favor of the creation of a legislative council.

Ad Interim
Comm't-
tees

¹ For a detailed discussion of the work of this committee, see W. Brooke Graves, *op. cit.*, pp. 259-262.

Realizing the need for a continuing agency to study the complicated problems with which a legislature must deal, several states have established legislative councils. Wisconsin set up an executive council in 1931 which, although drawing its members from the executive branch rather than the legislative, still was intended to provide research facilities as a foundation for legislative action. Kansas and Michigan created distinctly *legislative* councils in 1933 and Virginia, Kentucky, Nebraska, Connecticut, Illinois, Rhode Island, and Maryland have more recently followed suit. Several of these councils have functioned only spasmodically if at all, but others, including those in Kansas and Illinois, have now been active over a period of years. There is difference of opinion as to how large the council should be—Kansas and Illinois seem to be convinced that a comparatively large body of more than twenty¹ members is desirable while other states prefer a smaller membership of ten or a dozen.

Particularly important is a "well-staffed research department"² which must do the actual work of investigating after the council itself has decided what problems require attention.³ Needless to say, this staff should be recruited on the basis of its ability to carry on reliable investigations rather than on a partisan basis. This may seem at first sight an impossible expectation, considering the political character of state legislatures and the fact that the members of the council, though drawn from both major parties, are nevertheless partisan. However, many, perhaps most, of the really important matters with which a legislature must deal actually have very little political significance. There is no Democratic way to finance a welfare program; nor is there a Republican way of setting up a workmen's compensation system. What is needed is all the information possible as to how other states have handled similar problems, what actual results are likely to be produced by certain legislation, and what the most dangerous pitfalls are.

The members of a legislature cannot depend upon their own backgrounds to furnish these data, with rare exceptions, for they have not had experience which makes them authorities in these fields. Very

¹ Illinois has twenty-two members.

² Frederic H. Guild, "The Development of the Legislative Council Idea," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, p. 146, January, 1938.

³ Several of the states have been very fortunate in securing the services of distinctly able research directors. Kansas has long had Drs. F. H. Guild and Camden S. Strain; Illinois started out with Professor C. M. Kneier and now has Dr. J. F. Isakoff; while Nebraska has Professor R. V. Shumate.

frequently a proposal may promise good results, but the states which have tried similar schemes have been disappointed. The legislative council's research staff is in a position to find out what has been done in other states, whereas if the legislature depends upon its own resources it is likely to make serious mistakes. The fact that legislatures embark again and again upon projects that have been abandoned years before by states which have found them unworkable shows how necessary information is.

A decade is not a long time in which to judge the merits of an important experiment in state government. Moreover, the experience of states with legislative councils has been far from uniform; Wisconsin and Michigan, for example, did not have more than a biennium in which to try out the system because of political shifts which brought in unsympathetic state officials. The Kansas council has operated with distinct success, despite certain difficulties, for a long enough time to make it worthy of examination. Its research staff has made numerous studies which have been made the basis of important legislative action; the members of the legislature after initial suspicion apparently now rely upon the council for assistance; several costly mistakes have been avoided because of the expert advice which the council has furnished.¹ The legislative councils of Kansas and Maryland have gone so far as to draft legislative programs, while the Illinois council is primarily a fact-finding agency. It would seem that a legislative council has much to offer, particularly in those states which limit their sessions to sixty days or thereabouts, for instead of having to draft important bills and investigate problems after the legislature assembles this agency makes it possible to have that work done before the session convenes. Hence the marking of time during the first few weeks is minimized and congestion at the end is reduced.

Although the legislative council idea is quite new, there has been provision made for technical services for almost half a century. In 1901 Wisconsin started a bill-drafting and legislative reference service, while the New York State Library pioneered in a legislative reference division in the 1890's. The several states have

An Evaluation
of Legislative
Councils

Technical
Services

¹ For example, a bill proposing to tax liquor was estimated by its proponents to produce a certain amount which was necessary to balance the budget. The legislative council was able to show from the experience of other states that only a small fraction of this estimated amount would actually be collected. Other provisions were subsequently made and a serious deficit avoided.

followed this lead, until some forty-two of them now maintain legislative reference services and forty-three have public bill draftsmen. Legislative reference bureaus frequently provide both services to members of the legislature, although there has been a tendency to emphasize the bill-drafting service during recent years.

The ordinary member of a general assembly, even if a lawyer, is not trained in preparing drafts of proposed laws, since that requires a considerable amount of technical skill. During the years before **Bill Drafting** public bill drafters were employed by states, many bills were so poorly drawn that they did not accomplish what they were intended to and sometimes led to considerable public embarrassment, to say nothing of expensive litigation. Even now there are numerous examples of faulty drafting, but there has been a great deal of improvement during the last quarter of a century when experts have been made available for this purpose in most of the states. There is no compulsion attached to this service, although there are good arguments in favor of requiring every bill to meet certain standards. Inasmuch as it is left up to legislators whether they will make use of the bill-drafting services provided, the record of various states is not at all uniform. To begin with, the public bill drafters are usually regarded with suspicion and consequently have to prove their worth and reliability to the legislators. If there is a change in the personnel of a bill-drafting bureau the record in a single state may change radically in a very short time. In those states where bill drafters have won the confidence of the legislature, virtually all bills are either drafted in the first place or checked by these technicians,¹ while in other cases the relations between the members and the bill-drafting bureau are so strained that comparatively few bills receive expert assistance.² Members who use this service—and it is often the policy to permit private citizens to ask for aid also during times when the bureau is not too busy—bring their ideas to the bureau and they are then incorporated into carefully prepared bills.

Legislative reference services provide library facilities which bear particularly on public affairs and may undertake to compile reports on

¹ Dr. Charles Kettleborough built up such confidence over a quarter of a century among the Indiana legislators that he actually boasted of drafting more than 100 per cent of the bills. What happened was that he prepared bills that were never introduced as well as perhaps 98 per cent of those that were.

² Some states employ brokendown lawyers who have political influence for this purpose. Of course, their "expertness" is usually not impressive.

certain problems for legislators. Those legislators who take their responsibilities seriously may make considerable use of the books, public reports, and other materials available in the legislative reference agency, but the average member is too busy, indifferent, confused, or inexperienced to draw heavily on these facilities. Compilations and summaries may be prepared by the legislative reference services at the request of members; however, the staffs are usually not sufficiently adequate to do a great deal of extensive investigation. Where the bill drafting is associated with the reference service, the staff is likely to be more or less exclusively engaged in the former during a legislative session. Hence, while it might appear at first glance that a legislative reference bureau would perform substantially the same functions as a legislative council, this is far from the case in actuality. The former is rather routine in its activities, while the latter is primarily interested in research. The two do not necessarily encroach upon the territory of each other at all, though it is usually regarded as wise to coordinate their efforts and even to bring them together under a single director.¹

Legisla-
tive Refer-
ence
Services

RULES

There is considerable diversity in the rules of state legislatures because of local custom and usage. However, much of the difference is of detailed character rather than of basic importance. A careful analysis of the rules of several legislatures will reveal that their fundamental principles have developed over a period of several centuries, often going back to English parliamentary practice. The colonial legislatures based their rules very largely on English experience and Thomas Jefferson was by no means uninfluenced by these rules in preparing his famous *Manual*, which has been widely used by the states. The three-reading rule which is almost everywhere observed² may be traced back to the days before the printing press had been invented. Many of the rules strike the student of modern legislative procedure as not well suited for present-day use; the mere fact that they are suspended so frequently indicates that the members themselves do not regard them as very helpful. To begin with, they are

¹ For a good discussion of these services, see Edwin E. Witte, "Technical Services for State Legislators," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 137-143, January, 1938.

² Maine and North Dakota require only two readings. *Book of the States, 1941-1942*, *op. cit.*, p. 89.

often so complicated that it is difficult for the newer members to familiarize themselves even with those which are most commonly employed. As ex-Governor Alfred Smith puts it, "The rules of procedure of the assembly were so involved that it was difficult for a newcomer to understand what it was all about. I was diligent in my attendance at the meetings, but I did not at any time during the session really know what was going on."¹ Again they are very rigid despite the exigencies of the current period. Furthermore, they are frequently enormously time-consuming, even in those states which limit their legislative sessions to sixty days or so every two years—a member of a middlewestern legislature which cannot extend its sessions beyond sixty-one days reports that approximately one-third of the time of the lower house is consumed by the rules which provide for roll calls.² Some revision has been undertaken of the rules, but for the most part little has been done in this direction, despite the burden which is imposed. How much can be done in bringing the rules up to date is questionable. The parliamentarian of the California Senate during the years 1927-1937 concludes: "There is little chance that any great improvement in legislative procedure can be made by the modification of parliamentary rules, as these rules have developed over a great length of time and have, in general, been adjusted to the needs of the various state legislatures by the adoption of legislative rules or by the decisions of the presiding officers of the various houses as questions have arisen."³

The California parliamentarian quoted above suggests several avenues of improving the situation. To begin with, he asserts that presiding officers should "never apply technical parliamentary rules when they will not aid in conducting legislative business," maintaining that "certain short cuts can be justified in legislative procedure."⁴ Furthermore, he believes that it is not always a question of onerous rules, but perhaps more a matter of lack of acquaintance on the part of members with the rules; consequently he proposes an informal course, such as Congress has for some time offered, to familiarize new members with the basic rules.⁵ Simpli-

¹ See his *Up to Now*, The Viking Press, New York, 1929, p. 71. He refers to the New York Assembly and his own first term therein.

² William E. Treadway, "Problems Peculiar to the Short-Session Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCIV, p. 114.

³ Paul Mason, "Methods of Improving Legislative Procedure," *ibid.*, p. 151.

⁴ *Ibid.*, p. 151.

⁵ Arkansas has recently received publicity because of a school for new members of the legislature. Presumably attention is paid to the rules.

fied manuals or handbooks might prove helpful in acquainting legislators with procedure. Several states have found it possible to modify the rules in such a manner as to expedite business; for example, the motion to postpone indefinitely has been given a higher order of precedence than it has had in the past and no debate on this motion is permitted. This change in parliamentary procedure makes it possible to defeat a measure without consuming any valuable time in debate. The speaker ¹ of a lower house in a midwestern state legislature proposed in 1941 a drastic revision which would limit the number of bills which could be introduced in each legislative session, but it seems unlikely that this would be either feasible or wise. No doubt there are too many bills in the legislative hoppers at the present time to permit adequate consideration; moreover, reducing the number of measures has been suggested as preferable to the arbitrary termination of debate.² However, there is so much pressure put upon individual members to introduce bills that a really effective curtailment would add substantially to their burden, even if some guarantee were forthcoming that the meritorious bills would not be shut out in favor of those more politically expedient.

STEPS IN THE MAKING OF A LAW

The quantity of bills and resolutions introduced in American state legislatures today is literally enormous. In a single year as many as fifty thousand proposals³ may be made looking toward legislative action of one kind and another. The number is indeed so large that, despite the more than three thousand committees⁴ which exist to assist in sorting out and investigating the meritorious bills, the legislative councils, the legislative reference bureaus, and other facilities, the legislatures often find themselves bogged down. Even if the most modern machinery were provided and the severe limitations on duration of sessions removed, it would still be a heavy task to dispose of so many bills and resolutions. As the situation is, even conscientious members find it difficult to know where

**Multitude
of Pro-
posals**

¹ Speaker J. M. Knapp of Indiana made this proposal after a very hectic session in 1941.

² See Paul Mason, *op. cit.*, p. 152.

³ See Henry W. Toll, *op. cit.*, p. 3. Between 1911 and 1916 the legislative reference bureau of the New York State Library computed a total of 213,482 bills introduced in the various state legislatures, an average of about 1360 per session. See Robert Luce, *Legislative Problems*, Houghton Mifflin Company, Boston, 1935, p. 647.

⁴ There were more than three thousand committees in the forty-three legislatures that held sessions in 1937.

to begin their efforts, while the rank and file may be well nigh as helpless as a ship adrift at sea. Most of these proposals involve bills, though more than eight hundred in 1937 related to constitutional amendments and a fairly large number urged resolutions of one kind and another.

There is the greatest diversity in the more than fifty thousand proposals that are brought to legislative bodies during the course of a single year. Measures of far-reaching importance that

**Character
of Legisla-
tive Pro-
posals**

affect millions of people, call for expenditures of vast sums of money, and relate to the vital policy of a state may find themselves in the company of bills of the most minor character, providing for the correction of some technical error in a past enactment, the appropriation of a few hundred dollars, or the formal recognition of some obscure anniversary. Bills which have resulted from several years of careful study on the part of civic organizations, commissions, and ranking administrative agencies frequently are numbered just before or after crackpot schemes which provide some utterly impossible nonsense. Certain conclusions may be drawn from the welter of proposals. In the first place, the majority of the bills and resolutions (and it is not always easy to distinguish these from each other in practice) ¹ have to do with finances or administrative technicalities and are actually not general "laws" at all.² In the second place, one may be sure that there will be considerable duplication, that a half dozen or more proposals may relate to the same current issue.³ In the third place, it should be noted that many of the proposals submitted to a general assembly do not look toward positive action, but rather aim at abolishing some agency already established or repealing some regulation currently in force. Thus railroads lobbies may virtually always be counted on to submit legislation calling for the repeal of the so-called "full crew" laws in those states which have enacted them. Finally, there are invariably a number of bills which embody the ill-conceived notions of certain individuals or organizations of the hare-brained type. Bills to permit telephone subscribers to use pay telephones without cost, bills to divide all commodities into twenty categories and to prohibit a merchant to deal in more than a single cate-

¹ For a discussion of the general difference between a bill and various types of resolutions, see Chap. 20.

² See H. W. Toll, *op. cit.*, p. 3.

³ Not only may several bills on the same subject be introduced, but it is not uncommon to have two or more of them passed in a single session, despite the fact that they contain conflicting provisions.

gory, bills to pay every aged person a pension of several hundred dollars per month, are only a few of them. Some of these latter make their appearance only once, while others may be counted upon to come up every session.

There are many individuals and groups which desire the passage of legislation. Most of the pressure groups at times draft and sponsor legislation and many have elaborate programs which they push in virtually every legislative session. In this day and age it might seem that the desires of an individual would not receive much consideration—and this is ordinarily the case—but this does not deter fairly large numbers of persons from calling upon their legislators to assist in getting bills introduced. Many of the proposals made by individuals and organizations are devised for the selfish benefit of their authors; others are primarily aimed at repealing legislation already on the statute books; still others grow out of the hopes of civic-minded organizations for the improvement of government. There is hardly an agency of the state government that does not have its legislative program every time the general assembly meets; modifications, often of purely routine character, are requested in existing statutes; enlarged authority may be sought; generous appropriations beyond the budgetary provisions may be asked. Local governments also have their pet projects, even in those states which do not permit special local legislation and seldom a session goes by without the amending of the classified charters of municipalities. The governor may take a positive stand in favor of legislation, even going so far as to send in bills which provide for what he has in mind. The political organization which is dominant may also have interests which call for legislation.

Finally, there are the legislators themselves who, if they have any experience in public affairs, are likely to develop a special concern in one or more phases of state government; naturally this interest leads to legislative proposals which may be very elaborate in character. There is great diversity among members in this regard, but even party wheel horses sometimes do not regard legislative hobbies as out of keeping with their role of party loyalty. To what extent individual members actually initiate legislation themselves may be difficult to ascertain. In many states a provision is made for noting that a bill has been introduced by "request"—one may be sure in such cases that the member himself had nothing to do with framing the proposal and probably does not

Source of
Bills

The Role of
Legislators
in Prepar-
ing Bills

even favor it. But even if a member does not use this device and gives evidence of having a deep personal interest, there is no certainty that he personally is the originator. In many cases influential constituents come to a legislator—in some instances the legislator makes it a practice to visit almost every farm and business establishment before the legislature convenes to inquire what the wishes of his constituents are—with the ideas but not the formal draft of a proposal. The member may consider it strategic to take upon himself the burden of drawing up the bill along the lines suggested by the constituent. But after all allowances have been made for these cases, there are still a reasonable number of measures which may be designated as “members’ bills.” One trained observer who has had unusually good opportunity to reach a conclusion on this point states: “In general, they (the legislators) take a thoroughly statesmanlike interest in proposing and securing the enactment of laws which they think will be of benefit to the public or to their districts.”¹

After a bill has been prepared either by a private party or by the expert draftsmen employed by most of the states, it remains to a member of one of the houses to accomplish the actual introduction.² With the exception of revenue bills which somewhat less than half of the state constitutions specify shall start in the lower house, it is customary to permit a bill to be introduced in either house at the discretion of the parties concerned. There are two commonplace methods of getting a measure in the legislative hoppers: (1) the roll call which permits a member to arise when his name is called and present bills and (2) the less formal placing of a bill on the desk of the presiding officer.³ In the first instance the bill is usually immediately given its first reading and referred to a standing committee, whereas under the latter the bill may be sent to the presiding officer’s desk at any time but will not be read and referred to a committee until that officer finds a convenient time. The second method of introduction probably saves some time and in general is perhaps more advantageous than the roll call.⁴ In many states there is a rule that all bills must be presented within a certain number of days of the

**Method of
Introduc-
tion**

¹ Paul Mason, *op. cit.*, p. 153.

² In Massachusetts an interesting device permits an ordinary citizen to get a bill before the General Court by “petition,” but this is not used by most legislatures.

³ A single legislative body usually uses only one of these methods.

⁴ For an illuminating article on this general subject, see J. A. C. Grant, “The Introduction of Bills,” *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 116-122, January, 1938.

beginning of a session, often before the session has passed its half-way mark, unless a two-thirds consent of the members is obtained. This limitation probably serves a useful purpose, though Professor Grant points out that about 90 per cent of the bills in California are delayed until they barely get in under the dead line.¹ Moreover, it is not too difficult in some legislatures to get the consent of the members to present a measure after the date set for ordinary introduction.

The clerk of the house frequently decides which committee shall receive a bill, although the presiding officer has the final say. In most cases there is no question as to where a bill will go because **Committee Reference** its very nature labels it as belonging to a definite standing committee. Thus a bill relating to courts goes more or less automatically in most instances to one of the committees on judiciary; a bill modifying the authority of the state department of education is sent to the committee on public education; a bill having to do with workmen's compensation finds its way to the committee on labor. However, some bills are of such a character that they could reasonably be sent to one of two or three committees and this permits some discretion on the part of the referring official. At times a presiding officer, particularly a speaker of the house, will arbitrarily assign a bill to a committee which he knows to hold a certain point of view, despite the fact that the contents of the bill may not warrant such reference. Finally, in certain cases where an elaborate program is being planned by a party which has just been returned to power, it sometimes happens that a single committee having as members party leaders will be given almost all nonfinancial measures that pertain to that program. Needless to say, there is likely to be considerable ill-feeling among the legislators if bills are frequently referred to committees which have no claim to them, other than political considerations.

The committee stage in a state legislature is not unlike that which we have examined in Congress,² but it is important to keep a few differences in mind. In the first place, the mortality rate in state legislatures is distinctly smaller than in Congress, **Committee Consideration** where six or seven bills out of every ten never get beyond the committee state. In at least nineteen states every bill must be reported out by legislative committees, irrespective of whether the

¹ See *ibid.*, p. 119. Professor Grant states that "nearly 90 per cent of all bills are introduced in the last week of this first half (of the session), the final day being by far the worst."

² See Chap. 20 above.

committee is favorably disposed or not.¹ Even in those states where there is no requirement of this kind it is customary to report out something like one-half of all bills referred.² The constitutional rule requiring a report on every measure grew out of the experience of some states with irresponsible legislatures; bills widely regarded as highly desirable but opposed by a vested interest sometimes failed to come to a vote year after year because they were smothered in a committee. This safeguard makes the committee report a bill without recommendations even if it refuses to take a stand for or against, but it does not prevent other tricks which may have the effect of preventing enactment. There has been some criticism during recent years in the other direction; that is, that committees were too generous in reporting out bills even where they were given discretion. Apparently the committees have become sensitive as a result of the criticism aimed at them and consequently report out so many bills that the calendars become more than moderately congested. The fact that state legislators are nearer their constituents than members of the national Congress probably has something to do with this tendency, for it is not too easy to refuse to report a bill out of a committee when numerous personal visitations are made to members.

In giving attention to measures, standing committees may invite the public in to offer advice, but this is far less common than in the national legislature. Massachusetts has scheduled a fairly large number of public hearings on important bills and many other states have been willing to permit public hearings occasionally on highly controversial bills of wide popular interest. At least thirteen states require certain public hearings, while twenty-three leave the matter to the discretion of the committees.³ In light of the useful purpose served by public hearings in the national sphere it is unfortunate that the state legislatures do not make more use of this

¹ Data on thirty-eight states are available in the current *Book of the States, 1941-1942*, *op. cit.*, p. 88. Exactly half of them require a report on all bills, but in Mississippi and perhaps other states the rule is not observed always.

² Professor L. M. Short reports some interesting material relating to one state in "The Legislative Process in Minnesota," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 126-127, January, 1938. In 1935 the lower house in Minnesota reported favorably on 32 per cent of the bills originating in that house and unfavorably on 20 per cent. The senate in the same year reported favorably on 28.1 per cent of the bills originating in that house and unfavorably on 13.3 per cent. The lower house reported favorably on 63.2 per cent of the senate bills and unfavorably on 5.3 per cent. The senate reported favorably on 60.8 per cent of the house bills and unfavorably on 1.5 per cent.

³ For an incomplete tabulation, see the *Book of the States, 1941-1942*, *op. cit.*, p. 88.

device. The location of some state capitals is such that the people cannot get to public hearings very easily, but there are many capitals so conveniently situated and with such sizable populations themselves that this should present no problem.

In practice the great majority of committee hearings are executive in character, though it should be noted that it is frequently the custom to invite in representatives of groups that are particularly **Executive** concerned with the proposed legislation. Thus a state **Hearings** bankers' association may almost invariably have a representative in attendance at the meetings of the committees on banks and trust companies; organized labor may work closely with the committees on labor; and the teachers' federation may be given an opportunity to express itself when the committee on education is considering a bill to license teachers. The influence of some of these agents in connection with committee deliberations is very great, although in other cases little or no attention may be paid to their points of view. It is sometimes argued that there is no need to hold public hearings when the groups especially interested are permitted to send in their representatives; that listening to an assortment of speakers is a waste of valuable time. The difficulty is that the committees that limit their contacts to agents of pressure groups may not hear the whole story, for, despite the attempt of many of these agents to maintain a reasonable amount of objectiveness, they are hired to promote the interests of a certain group. The public interest in consequence may not be adequately brought to the attention of the committee and the rank and file of citizens may therefore suffer.

In a previous chapter some attention has been paid to the numerous pressure groups that are represented in a state legislative session.¹ There is no purpose in repeating the details as to types of **Pressure** groups and methods of procedure here, but it should be **Politics** emphasized that no one can expect to understand the actual process of legislation in a state without taking pressure groups into account. They are constantly at work on the committees which consider bills, whether their representatives are invited to appear at hearings or not. Not satisfied with cultivating committees, they contact large numbers of other members of the general assembly, so that when a bill comes to the floor for debate and a vote they can count on favorable action.

¹ See Chap. II.

As soon as a bill is referred to a committee, it may be ordered printed so that the committee members will have ready access to copies. Needless to say, it is convenient for committee members to have printed copies of the referred bills at hand. Yet the printing of all bills, irrespective of their character, is likely to be an expensive matter; moreover, many bills are on their very face of the crackpot variety and require no serious consideration. In order to avoid the expense incident to printing the many bills introduced, some legislatures do not send a bill to the printer unless a committee regards it as sufficiently meritorious to deserve at least a qualified recommendation. This may work a hardship on a committee which is made up of a dozen or more members, especially if there is available only one or two copies of the typewritten text, but it does save a substantial amount of printing expenditure. After a bill has been ordered printed, state legislatures are often more careful than Congress and limit the copies to a comparatively small number. Inasmuch as additional copies are not likely to cost a great deal after the type has been set up, it is questionable whether this practice is not unduly penurious.

After a committee has completed its consideration of a bill and decided to recommend passage with or without changes, it prepares a report for submission to the house to which it belongs, setting forth its recommendations. Important bills are very frequently accepted in principle by a committee but recommended for passage only after certain changes have been made in the text as originally proposed. If the committee is split on its attitude, both a majority and a minority report may be drawn up. Having reached this stage, the committee notifies the appropriate clerk of its readiness to report and then must wait until the bill is called up for second reading. In order to expedite business some houses have adopted rules which require a committee to report within a specified period, say twenty days or a month. The congestion in some legislatures is so pronounced that there is not time to hear the reports of committees on many bills, even those of considerable importance; consequently bills frequently die for want of attention despite the favorable attitude of the committees to which they are referred.

If the steering committee of the majority caucus or the presiding officer regards a bill as desirable, it is probable that time will be found to hear the report of the committee. After that has been made, it is usually provided by the rules that debate and

amendments are in order. If the rules are not suspended and debate and amendments cut off—which is not an infrequent occurrence in some legislatures—spirited discussion may rage and numerous amendments may be offered. However, the debate in state legislatures is not reputed to be either brilliant or incisive in general, though at times almost any legislative body is likely to put on a good show. The pressure of time and the lack of familiarity on the part of many of the members does not encourage a high quality of debate; indeed a casual visitor may be so bored that he wants to leave the chamber at once and cannot see what use there is of having debate at all.

Of course, a great deal of time may be wasted in debate which is beside the point and the members may have their minds pretty well made up beforehand as to how they will vote, but, nevertheless, reasonable freedom of debate serves a useful purpose. It brings the bill into the limelight for one thing and permits the press to focus the attention of the public on what seems to be either a wise or an unwise action. Furthermore, debate and an opportunity to amend are fundamental in the democratic process. A dictatorial governor who wants action on large numbers of bills and wants it quickly may be irritated at the time required by debate, professing to believe that it is much more efficient to have large numbers of important bills steam-rolled through without discussion or change. And it must be admitted that a legislature which suspends the rules providing for debate and amendment may turn out a distinctly larger amount of work during a session. Nevertheless, the cost is a high one in the long run, for it breaks down the fundamentals of responsible government—the legislature might almost as well be thrown out entirely and laws made by decree if it is to be a mere rubber stamp. The full text of the bill may be read at this time, if it is read at all—in many cases it is not given a complete reading at any time despite the rules.¹ Ignoring this tradition is less dangerous than cutting out debate and the opportunity to offer amendments because members have printed copies at hand and the reading clerk ordinarily drones in such a fashion that it is difficult to follow if one wishes.

Every reading of a bill theoretically calls for a vote, but it is customary to take the favorable vote on the first reading for granted and

¹ Several states, including California, Idaho, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oklahoma, and Tennessee provide for full reading on third rather than second reading.

to refer bills more or less automatically to standing committees. However, a vote is taken after second reading as to whether the bill will

Voting be permitted to pass to a third reading. If one-fifth or so of the members demand a formal roll-call vote, it is often possible to have one, but it is more common to dispose of the second-reading vote by having the speaker put the question "All of those in favor, say aye; those opposed no." If the results of the viva voce vote, as this is called, are uncertain, a standing or hand vote may be called for or members may be asked to file between tellers for the purpose of being counted. The vote after third reading is, of course, the final one and it frequently is of the roll-call variety. There is doubtless much justification of the roll-call vote in the case of important bills which are about to be given a final vote, but the time consumed may be great. One member of a lower house reports that his house in 1937 had 518 roll calls which consumed about 19 out of the 61 days permitted for a biennial session.¹ However, the New York lower house often complies nominally with the rule by having the clerk call only 4 names out of the 150.² Several companies have developed electrical voting devices which cut the time required to a mere fraction of that necessitated by the traditional call by the clerk and in addition permit members to summon pages, indicate that they desire to be recognized, and so forth. However, despite the gadget-mindedness of the American people, only eight of the states have installed these systems as yet.³ They are still costly to begin with—a single installation may require an expenditure of \$40,000 or \$50,000; furthermore, they may permit members to vote for other members and even nonmembers to vote for members.⁴

After the bill has passed second reading, it goes back on the calendar to await a time when it can be given a third reading. Though the second reading offers greater hazards than the third, nevertheless, many bills are not able to surmount the barriers imposed by this stage. To begin with, the legislature may adjourn before a third reading can be ordered; then, too, some members may suddenly become cautious when they realize that their votes are to be

Third Reading ¹ William E. Treadway, "Problems Peculiar to the Short-Session Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 115, January, 1938.

² See A. E. Smith, *Up to Now*, The Viking Press, New York, 1929, p. 89.

³ California, Iowa, Michigan, Minnesota, and Texas have electric roll-call devices in the house; Virginia and Wisconsin in both chambers; and Nebraska in its single house. See *Book of the States, 1941-1942*, *op. cit.*, p. 89.

⁴ See Paul Mason, *op. cit.*, p. 158.

recorded in a formal roll call which may be reported by the newspapers to their constituents. Debate is ordinarily permitted at this reading and amendments are possible under certain conditions in some houses, but the third reading ordinarily sees less debate and distinctly fewer amendments than the second reading. If the bill passes, an engrossed, or specially prepared copy, is signed by the presiding officer and the bill is sent to the other house, where it goes through substantially the same process noted above. If the bill is passed in the same form by both houses, it still has to pass the gauntlet of the governor, which, as has been pointed out,¹ is a very difficult one in those instances where a fourth or more of the bills are vetoed.

Very few important bills pass both houses with every little detail unchanged and even a very slight change requires further action by the house in which the bill originated. If the modification is of a routine character, it is more than likely that the necessary approval will be forthcoming, but if extensive amendments have been added, there may be considerable question whether the house of origination will agree. In such cases it is the custom to appoint conference committees to seek an agreement, so that the bill may not be lost. If the members of the conference committee cannot arrive at an understanding, they are finally discharged, but in most instances they find it possible to effect a compromise which they recommend to their houses. As a rule, the recommendations of conference committees are not subject to amendment and consequently must be accepted or rejected as a whole. There is often grumbling at the recommendations; yet majority acceptance is ordinarily the rule.

If the governor returns a bill to the house in which it started without his approval, the officers of that house announce this action to the members. An attempt may then be made to pass the bill over the veto of the governor. In those states which require a two-thirds vote for such action, it is, of course, not easy to achieve this end, particularly if the governor has any influence among the members. In the several states which permit repassage by an ordinary majority vote, it is obviously less difficult to handle the situation, though even here the influence of the governor will frequently be such as to deter members from repeating their favorable votes. If both houses agree to ignore the governor and muster the required majority, the bill becomes law despite the veto.

¹ See Chap. 38.

There are few corporations, university faculties, or social organizations that would be willing to cumber themselves with the many rules and regulations that are taken as a matter of course by all state legislatures. The process is indeed so complicated and long drawn out that one wonders how any considerable number of bills is finally enacted into law. The rules look more forbidding on paper than they actually are in operation and long practice has given the ordinary legislature a good deal of skill in getting along in spite of these encumbrances. A bill has about one chance out of four of getting over all of the obstacles, which, though perhaps not too favorable in principle, permits an impressive addition to the statute books every year. Out of approximately fifty thousand proposals submitted to forty-three state legislatures in 1937 more than twelve thousand finally got themselves enacted!

As the constitutional limit becomes a matter of a few hours away in those states which do not leave the time of adjournment up to their legislatures, a most colorful spectacle greets the eyes of those who observe the general assembly in action. The budget which must be passed to keep the state departments in operation may still be awaiting action; bills that the governor has insisted be passed upon threat of a special session are still on the calendar; dozens of bills of first-rate and pressing importance remain to be considered. The agents of pressure groups are trying their best to make last-minute rescues of bills which are dear to the hearts of their clients, while the opponents of controversial legislation gird themselves for the final fight to prevent enactment. The rules are largely in suspension; the clerks and presiding officers have shouted themselves hoarse; few members can keep track of what is being done. The committee on rules brings in special orders of business designed to permit the passage of favored bills; the steering committee of the majority attempts to whip its members into final loyalty; individual members take the floor to seek unanimous consent so that a cherished bill can be rescued. As midnight approaches and the legal life of the general assembly is about to expire, there may still be business which simply has to be transacted and hence the clocks which tick away in the chambers are set back until the final gavel gives the signal for adjournment—it may be broad daylight outside, possibly it is afternoon of the day after, but the clock shows 11:55 P.M.

But it is not the last-minute pressure which is most striking, for that

is more or less to be expected. The noise, the confusion, sleepless nights galore, the strain of living away from home and eating the stale food provided by hotels and boarding houses, the hopeless task ahead, the prospect of returning to the humdrum of routine existence at home, all combine to induce a state of mind which is a combination of hysteria, hilarity, and irresponsibility. Members shout, pound the backs of their colleagues, utter Indian war whoops, and engage in snake dances. Plentiful supplies of liquor are at hand either on the floor or near by and many members become so drunk that they can scarcely stand up. Entertainers are frequently brought in from the outside—swing bands blare out their melodies, dancers cavort, clowns circulate among the members, and crooners bring tears to the eyes of those who are maudlin. The floor of the chamber and all the furniture is covered with confetti, streamers of paper, bottles, tobacco litter, and a conglomeration of odds and ends. One who reads the newspaper accounts imagines that the legislature has gone crazy or at the very least has set out on an orgy of debauch, but it is hardly fair to judge typical conduct on the basis of this one day. It would be as sensible to conclude that the frolics of Elks and Shriners, the roaring of Lions Clubs, the hell weeks of fraternities, and the antics of Legionnaires at their annual conventions are characteristic of the business and professional lives of their prosaic members.

DIRECT LEGISLATION

The popular distrust of legislative bodies, the notorious control of the legislatures of certain states by powerful vested interests ¹ over a period of years, and the lack of attention which some general assemblies have displayed toward the desires of the people for certain types of legislation all contributed to the adoption of constitutional amendments providing for direct legislation by many of the states. By the end of World War I almost half of the states had made some provision for machinery which would permit the people to veto actions taken by irresponsible legislatures and to write upon the statute books laws which the general assemblies refused to pass. Since 1918 there has been comparatively little progress made, though such states as Idaho and Utah have revised earlier provisions. The advocates of direct legislation argued most persuasively for the initiative and referendum during

¹ For example, the Southern Pacific Railroad controlled the legislature of California for a considerable period in the early twentieth century.

the years following the pioneering of South Dakota in 1898, promising what amounted to political utopia to those states that would take appropriate action. Experience has hardly borne out the glowing claims made by those who fought so vigorously to further the spread of direct legislation, but those states which have established such provisions have seldom abandoned them.

Thirteen of the forty-eight states permit amendments to their state constitutions to be made by the initiative. After interested individuals and organizations have drafted amendments deemed desirable, they circulate petitions which must be signed by from 8 to 15 per cent of the voters, depending upon the state; five states specify that these signatures must be secured from various districts of the state.¹ After the requisite number of signatures has been obtained, the petitions are lodged with a specified state officer, often the secretary of state, and if enough of the signatures are bona fide the proposed amendment is submitted to the voters. The requirements in regard to ratification are usually the same as those prescribed when amendments are proposed by the legislature; in most states an ordinary majority is sufficient.

Nineteen of the states permit their voters to supplant the general assembly on occasion in enacting statutory legislation. Ordinarily bills are presented to the legislature first to see whether they will be enacted in the usual fashion, but if a general assembly persists in ignoring a bill which has wide popular support resort is then taken to the initiative. Petitions which contain the text of the bill, or, if it is too lengthy, a summary of its principal provisions are circulated among interested voters for signature, from 3² to 10 per cent or from ten to fifty thousand of the qualified voters are required to sign before the next step can be taken. In certain states a small number of signatures will serve to bring the bill to the legislature and an additional number must then be secured to bring the measure to a vote if the legislature refuses to take action.³ Some states stipulate that signatures must not be confined to a single section of the state: thus Arkansas asks for at least fifteen counties, Missouri specifies two-

¹ A convenient table listing the requirements in the various states will be found in James K. Pollock's "The Initiative and Referendum in Michigan," *Michigan Governmental Studies* 6, University of Michigan Press, Ann Arbor, 1940, pp. 87-90.

² Ohio requires only 3 per cent to begin with, but if the legislature refuses to take action an additional 3 per cent must be secured.

³ Nine states have this indirect form of initiative.

thirds of the congressional districts, and Utah requires half of the counties. If the proper number of signatures ¹ is forthcoming, the petitions are sent to a designated state official for checking; then the measure is placed on the ballot if that official certifies that the requirements have been met.

The most popular form of direct legislation is the referendum, which at present is in use in twenty-one of the states.² Laws which the general assembly has enacted and the governor has permitted to become law may be highly objectionable to large numbers of citizens. The referendum permits the voters to have these measures submitted to a popular vote, if, and *this is of the greatest importance in practice*, they are not labeled as emergency laws. What happens in some states which have the referendum is that the legislature will brand virtually every statute of any general interest as belonging to the emergency category and that serves to prevent almost all laws from being brought under referendum action. From 5 to 10 per cent of the voters are required to sign referendum petitions in sixteen of the states, while four states stipulate a definite number varying from seven to fifteen thousand.³ Six states regard it as essential that signatures be secured from various sections of the state: thus New Mexico asks for 10 per cent of the voters from three-fourths of the counties, while Montana and Nebraska mention 5 per cent from two-fifths of the counties.⁴ After the required signatures are in hand, the procedure is the same as for the initiative, except that in New Mexico 25 per cent of the voters, if they sign petitions, may get a law suspended pending a vote.

The information available regarding the use of the constitutional and statutory initiative and the referendum is not as conclusive as it might be. A recent study by Professor Pollock furnishes a good picture of the experience of Michigan during the years 1910-1939, which represent virtually the entire period that Michigan has operated under the system; other studies are available of California, Oregon, and Colorado. During the thirty-year period in Michigan twenty-three constitutional amendments were initiated by popular petition and only four statutes; but only four of

Popular
Referen-
dum

Use of
Direct Leg-
islation

¹ Inasmuch as a good many signatures are invariably found invalid, a fairly wide margin over the minimum number required is necessary for successful action.

² See James K. Pollock, *op. cit.*, pp. 90-91, for the list.

³ See James K. Pollock, *op. cit.*, pp. 92-94, for the requirements of the various states.

⁴ See James K. Pollock, *op. cit.*, pp. 93-94, for the other state requirements.

the amendments and not a single one of the statutes was adopted by the voters.¹ Certainly Michigan has not used the machinery of direct legislation to add many amendments or ordinary laws. California, on the other hand, has used the device much more frequently, for during a period only slightly briefer 325 measures were submitted to the voters.² Oregon, too, has found it expedient to make distinctly more use of direct legislation, and during 30 years placed 214 proposals before the voters.³ Colorado voted on 121 proposals during 1912-1938, with 43 submitted in 11 elections held from 1925 to 1939.⁴ Perhaps it is fair to say that the most significant achievement of the initiative and the referendum has been negative rather than something to be indicated in positive figures; how much legislatures have been put on their good behavior because of such swords hanging over them cannot be absolutely demonstrated, but there is reason to believe that the influence has been fairly great.

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¹ See *ibid.*, pp. 18-19.

² See V. O. Key and W. W. Crouch, *The Initiative and Referendum in California*, University of California Press, Berkeley, 1939, p. 527.

³ See Waldo Schumacher, "Thirty Years of the People's Rule in Oregon," *Political Science Quarterly*, Vol. XL, p. 243, June, 1932.

⁴ See State Legislative Office of Colorado, *The Initiative and Referendum in Colorado*, State Printer, Denver, 1939, p. 26.

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CHAPTER XLI

STATE COURTS

WITH the exception of the federal judiciary the multitude of courts in the United States are legally included within the state judicial systems. It might be supposed from their names that municipal courts are an integral part of city government and that county courts belong to county government—and as a matter of fact these courts have a great deal to do with the efficient operation of cities and counties. However, they are according to the law parts of the state court system, deriving their authority from state constitutions and statutes and constituting the basic gradations in the state hierarchy of courts.

Although the federal Supreme Court is often in the limelight and other federal courts have a considerable amount of prestige, it should be borne in mind that it is the state courts that handle most of the litigation in the United States. Indeed well over 90 per cent of all the cases that arise, both civil and criminal, are begun, decided, and ended in one or more of the courts that belong to the state level. This, of course, means that the ordinary person has whatever contact he may have with the courts not with the Supreme Court of the United States or even a federal district court but with a justice of the peace court in Cross Roads, a municipal court in Megapolis, or a court of intermediate grade in Middle County. This very fact makes the state courts very significant, for their success or failure will in large measure determine the attitude of the American people toward the entire judicial system.

**Contact
with the
People**

THE ORGANIZATION AND JURISDICTION OF STATE COURTS

The early colonists from England brought with them the justice courts which for centuries have been an essential part of the English court system. The development of these tribunals has proceeded along different lines in various states, but in general they are at present rather unlike their prototypes in England. At one time these courts were to be found in both rural

**Justice of
the Peace
Courts**

and urban areas, but they are now more intimately associated with the administration of justice in the former, though it is not uncommon to find them existing alongside of municipal courts even in the large cities. The number of justice courts in rural districts is very large; there may be more than a thousand in a single state. Even in these areas there has been a disposition to deprive them of some of their former authority because of their abuse of motorists,¹ but they remain as the foundation of the judicial structure in rural America, handling more cases than all the rest of the courts put together.

The justice courts are not only presided over but are largely identified with the justice of the peace. Higher courts have their clerks, reporters, bailiffs, and other attendants, but in the justice of the peace courts the justice himself, sometimes flanked by a constable, performs all of these services in so far as they are performed at all. He is usually elected by the voters for a two- or a four-year term and often receives his position more or less by default because there is so little interest in the office. Unlike other judicial officers, the justice of the peace does not have to be trained in the law and, as a matter of fact, he seldom is. A study of 1,171 Pennsylvania justices of the peace a few years ago revealed that 189 were farmers, 152 realtors, 92 merchants, 62 clerks, 42 teachers, 27 miners, 25 accountants, 24 carpenters, 21 railroad workers, 21 salesmen, 14 painters, 10 barbers, 10 housekeepers, and so forth. Only 16 were attorneys and 181 were found to have no occupation at all other than their public position.² A judge without training in the law may seem paradoxical to many students. However, the cases disposed of by the justices are relatively simple and often depend more upon common sense and an understanding of human nature than upon an expert knowledge of the details of the law. Handbooks of basic rules of law are usually provided the justices for reference so that they can look up the law that applies in a given case; it may be added that some of them have difficulty using even these handy compilations.

Only in rare instances is a fixed salary paid to a justice of the peace

¹ However, a survey reported in 1941 by the national committee of judicial councils revealed that more than twelve thousand in forty-four states still exercise traffic jurisdiction. Incidentally, lack of common courtesy was encountered in one-third of the courts examined. See the *New York Times*, July 20, 1941.

² See Bruce Smith, *Rural Crime Control*, Institute of Public Administration, New York, 1933, pp. 247-248. This study reports similar diversity among the justices in New Jersey and New York.

out of the public treasury;¹ instead he is expected to pay himself out of the fees which he collects from those who come before his court.

Perquisites of Justices Aggressive and unscrupulous justices have been known to make a considerable amount of money from their fees. The marriage-mill justices across the state lines north and south of Chicago once apparently fared very well, while the speed-trap, "roadside" variety of justice sometimes profited to the extent of thousands of dollars per year. However, marriage laws have been made more stringent and automobile clubs have curbed the power of justices in traffic cases, thus removing much of the cream from the business. A study of incomes of justices in Hamilton County, Ohio, in which Cincinnati is located, computed the average annual income of all such officials in that county as \$415.75, with a range of from \$4.30 to \$2,557.06. Approximately one-fourth received less than \$100 per year and more than two-thirds received less than \$200 per year and more than 75 per cent less than \$300; only 8 per cent of the justices exceeded \$1,000 per year.² This feature of the office is almost uniformly condemned by those who are expert in the field of the administration of justice— it violates a cardinal principle that the judge shall have no monetary interest in the case which he decides. As it is now, the justice of the peace is usually far from well to do and needs the income derived from his office; yet that income is dependent upon his finding persons charged with misdemeanors and criminal offenses guilty. Is it strange that the justices so often assess costs against accused persons, even though they suspend the fine, thus proceeding on the principle of compromise which permits them to collect a fee without imposing the full penalty of the law? In all of the cases involving litigation there is a striking tendency to find these accused or proceeded against at fault. A study of 933 civil cases handled by 16 justices of the peace in Michigan revealed the startling fact that 926 cases had been decided in favor of plaintiffs and only 7 in favor of defendants.³

The justice of the peace courts have limited jurisdiction over both criminal and civil cases. In criminal cases they deal with petty theft,

¹ In Pennsylvania only 5 of 1,195 justices of the peace depended entirely upon salary; in Indiana only one justice derives his income from salary. See *ibid.*

² Paul F. Douglass, *The Justice of the Peace Courts of Hamilton County, Ohio*, The Johns Hopkins Press, Baltimore, 1932, p. 70.

³ See Edson R. Sunderland, "The Efficiency of Justices' Courts in Michigan," appendix D of *Report on Organization and Cost of County and Township Government*, Michigan Commission of Inquiry, 1933.

disturbing the peace, drunkenness, and offenses of that character; they may also hear charges of a more serious nature, binding the case over to await the attention of an intermediate court. In civil cases their jurisdiction varies from state to state, sometimes being limited to \$50 or \$75, again extending to \$100 or more. Some of them concentrate their attention upon performing marriages.

Jurisdiction of Justice Courts

In sizable cities there are magistrate, police, mayoralty, or aldermanic courts to handle the tens of thousands of minor cases which arise out of human relationships. Although the officials who preside over these courts are more frequently trained in the law and receive stated salaries, the record of these tribunals is in general even worse than has been pointed out in the justice of the peace courts. Judges are more often than not the creatures of political bosses and machines and if they are not personally venal they find it expedient to decide cases on the basis of recommendations received from precinct committeemen rather than upon their merits.¹ In 1935 twenty-seven out of twenty-eight magistrates in Philadelphia were indicted on various charges. Professor Salter has vividly described the role of the political organization in determining their decisions.² The atmosphere in most of these courts is indescribably bad: noise, filth, confusion are frequently prevalent.³ Their jurisdiction is often somewhat more extensive than that permitted a justice of the peace court. The report of the Pennsylvania Crime Commission of 1929 showed that 74 per cent of all cases of major crime did not get beyond these courts.⁴

Magistrate or Police Courts

The unsatisfactory state of affairs in the police courts has led to the establishment of municipal courts in some of the larger cities, which may or may not entirely supplant the magistrate courts. Municipal Chicago, New York, Detroit, Philadelphia, Cleveland, Cincinnati, Baltimore, Boston, and Indianapolis are among the cities that now have unified municipal court systems. These may be organized on a geographical basis, as in New York City, where some

Municipal Courts

¹ Denis Tilden Lynch, *Criminals and Politicians*, The Macmillan Company, New York, 1932.

² J. T. Salter, *Boss Rule*, McGraw-Hill Book Company, Inc., New York, 1935.

³ For comments, see Raymond Moley, *Tribunes of the People: The Past and Future of the New York Magistrates' Courts*, Yale University Press, New Haven, 1932.

⁴ Quoted from W. Brooke Graves, *American State Government*, D. C. Heath and Company, Boston, 1936, p. 515.

twenty-eight districts have been arranged, with a section of the municipal court in each. Or they may be built around the functional principle, as in Chicago and Philadelphia, where there are divisions dealing with civil cases, juvenile cases, domestic relations, misdemeanors, traffic violations, and so forth. A chief judge is ordinarily given supervision over the entire system; judges may be elected or appointed. The jurisdiction of these courts is usually greater than that given magistrate courts, though it may not be equivalent to that of intermediate courts.¹ Political influences have undoubtedly been less controlling than in the police courts, but it would not be fair to say that such considerations are unimportant.² Judges are more adequately trained and superior in general character to the justices of the peace; more attention is usually given to the atmosphere of the courtroom.

Standing immediately above the justice and magistrate courts in the judicial hierarchy are the district, county, superior, general sessions, oyer and terminer, and circuit courts, as the intermediate courts are designated in the several states. These courts are organized on a geographical basis, which frequently makes the county the unit, although at times two or more counties may be joined together if the amount of judicial business is comparatively small. In the more populous counties the burden of cases is so great that a single court cannot possibly handle everything and several divisions or sections of the court may be created. Intermediate courts are presided over by single judges³ who are required to be members of the bar and receive fixed salaries. They have clerks and reporters attached to them for the keeping of records and the making of transcripts; bailiffs or deputy sheriffs maintain order and carry out the orders of the court; the prosecuting attorney is present or represented by deputies when criminal cases as well as certain civil cases are being heard.⁴ These are the courts which make use of both grand

¹ In Philadelphia civil cases may involve up to \$2,500 and criminal offenses with the exception of felonies, perjury, forgery, and so forth, are triable at the option of the district attorney.

² For a discriminating discussion of the achievements of the Chicago municipal court, see Albert Lepawsky, *Judicial System of Metropolitan Chicago*, University of Chicago Press, Chicago, 1932, especially Chaps. 6 and 7.

³ Of course, where there is more than a single court there will be more than one judge, but only one judge sits in each case.

⁴ The prosecuting attorney, sometimes called the "state's attorney" or "district attorney," represents the state in handling cases of criminal character against accused persons. He and his deputies prepare the case for the state, muster the evidence together, call witnesses to support their charges, and cross-examine the witnesses called by the defense.

juries and trial juries, as far as these instrumentalities of justice are in use. Intermediate courts have both original and appellate jurisdiction, hearing cases appealed from the justice and magistrate courts and giving attention to more important cases that are brought to them to begin with. They have both criminal and civil jurisdiction and hear cases in equity, but some states provide separate tribunals of intermediate grade to handle these different kinds of cases. New Jersey has separate chancery courts to care for equity proceedings; Pennsylvania has courts of common pleas to hear civil cases and courts of oyer and terminer to give attention to criminal cases; a number of states provide for separate probate courts to oversee the settlement of estates and the carrying out of wills. In a single state there may be different arrangements for rural areas and metropolitan counties—the same court may try both criminal and civil cases in the former but there may be superior courts for civil cases and criminal courts for criminal proceedings in the latter. As far as the scope of jurisdiction is concerned, these courts are ordinarily unlimited either in the amount of money involved or the seriousness of an offense.

Above the intermediate courts there may be a single appellate court, usually known as the “supreme court,” or it may be necessary to provide a more elaborate system for disposing of those cases **Appellate Courts** which must receive further consideration. A state with a fairly small population, such as New Mexico, finds it reasonable to expect the highest court of the state to receive appeals directly from the intermediate courts. On the other hand, it would be an utter impossibility for New York to authorize all appeals from the intermediate courts to go at once to the Court of Appeals; consequently that state has what is known as a “supreme court” which is rather elaborately organized into trial and appellate divisions. Single judges sit in a trial division, while several judges attached to the court sit together when an appeal is being heard from an intermediate trial court. The states with fairly large populations and reasonably complicated industrialization face still another problem; they do not need the New York facilities but they would swamp their highest courts if all appeals from intermediate courts were concentrated in a single tribunal. These states frequently create a single court, often known as an “appellate

In civil cases the state is ordinarily not one of the main parties, but the prosecutor may watch proceedings to protect the public interest where domestic relations and certain other types of civil cases are being tried.

court," which relieves the supreme court of much of its burden and is given final jurisdiction in certain types of cases which do not involve the validity of laws.

The highest court of a state, whether it be designated the supreme court, as is customary, the court of appeals as in New York, the **Supreme Courts** supreme judicial court as in Massachusetts, or the court of errors and appeals as in New Jersey, is always made up of a bench of judges, varying in number from three to fifteen. These courts have final jurisdiction in all cases which do not involve a federal law, treaty, or constitutional provision. They ordinarily have no original jurisdiction, but may be given the authority to make rules for lower courts. In general, they give their attention to points of law rather than to facts which are left to the lower courts, but some states permit the highest court to review both the law and the facts in a case. The prestige attached to service on such a court is usually great, despite the fact that salaries may be less than the returns from private practice. Such courts as the court of appeals of New York and the supreme judicial court of Massachusetts have achieved so great a reputation over a period of years that they rank only just beneath the Supreme Court of the United States itself and their opinions are referred to by judges throughout the country. Unfortunately traditions in some of the states permit the position of supreme court judge to be disposed of on political grounds rather than on the basis of achievement, thus condemning the courts to mediocrity or in a few instances even notoriety ensuing from absurd or politically dictated decisions.

The courts which have been discussed above constitute the regular court system of the states. Population and concentration of wealth **Special Courts** may necessitate more elaborate provisions in some states than in others, but the broad outlines of judicial structure are quite similar throughout the country. In addition to the traditional courts, there are sometimes special courts which deserve mention. Juvenile courts have been created in the more progressive states, either on a state-wide scale or at least in urban areas, for the handling of cases which involve children. It is recognized by most authorities that ordinary courts are not well suited for the disposal of juvenile cases. Specialists in child psychology are needed if the right kind of treatment is to be forthcoming; moreover, the publicity attendant upon the proceedings of a regular court is such that youthful offenders

may be ruined beyond chance of future reform. Unfortunately there has been a feeling in some states that all that is required is the establishment of separate juvenile courts and that any political favorite with legal background can serve satisfactorily as judge. Land courts have been set up by a few states to settle disputes in regard to land titles; domestic relations courts sometimes are provided to handle family cases with or without juvenile jurisdiction; courts of claims receive cases in which individuals or corporations maintain that they are entitled to monetary damages from the state. Finally, there are certain administrative agencies which act in a quasi-judicial capacity. The workmen's compensation commissions which determine the awards to those injured in connection with industrial employment and the public-service commissions which fix rates and determine standards of service of public utilities are perhaps the best known.

Although state courts are organized in such a fashion that jurisdiction flows from one to another along well-recognized channels, there has ordinarily been a considerable amount of autonomy. **Judicial Councils**
An independent judiciary is frequently spoken of as an integral part of democratic institutions and this can hardly be denied in so far as independence of political dictation is concerned. On the other hand, unless the various courts of a state are working in harmony and following established principles, there is likely to be delay, confusion, and other weaknesses which are not incident to an efficient administration of justice. The general policy in the past has been to allow each court to go along about as it pleased, subject, of course, to the rules laid down by the state constitution and statutes and with the always looming check of appellate courts on points of law. The result has been that some courts have kept well abreast of their dockets while others have been three or four years behind; some courts have kept careful records while others have been very neglectful in this matter; some courts have interpreted rules rather liberally while others have applied them most strictly. During the last two decades a considerable movement has developed looking toward a coordination of the efforts of all the courts throughout a single state through the establishment of judicial councils.¹ Approximately half of the states

¹ Many articles have been written on this subject. Among others, see: Roscoe Pound, "The Crisis in American Law," *Harpers Magazine*, Vol. CLII, pp. 152-158, January, 1926; J. A. C. Grant, "The Judicial Council Movement," *American Political Science Review*, Vol. XXII, pp. 936-946, November, 1928; and "Judicial Councils and Their Trends," *Journal of the American Judicature Society*, Vol. XVIII, pp. 150-152, February, 1935.

have now seen fit to set up these councils,¹ which are charged with three types of function in those jurisdictions where authority is at all adequate: (1) general supervision over the routine work of courts of every grade, (2) the making of rules, and (3) the gathering of data and the conduct of investigations pertaining to the administration of justice.

Judicial councils are variously constituted, but they are usually headed by the chief justice of the state supreme court and include in their membership judges from the lower courts, practicing attorneys, representatives of the attorney-general's office, law-school professors, representatives of the judiciary committees of the two houses of the general assembly, and laymen.² A full-time office staff performs the routine work under the direction of the chief justice; the council itself meets at stated intervals for a day and may be called into special session by the chief justice.

The judicial councils of some of the states exist largely on paper; others have had to proceed cautiously because of the opposition which they have encountered from vested interests. In those states where the movement has gone far, the council has the power to transfer judges temporarily from courts which have little to do to courts which are far behind with their dockets. Court rules have a great deal to do with the efficient handling of cases; yet in many places they are far from modern in character. State legislatures sometimes attempt to lay down rules for the courts, while in other states the supreme court has been given general responsibility in such a field. Legislatures are not well suited to draft rules because of the time element, the many pressures that operate, and the emphasis placed on political expediency. Supreme courts are more logical, but they are occupied with their cases, may not see all of the issues involved, and represent only the appellate point of view. A judicial council, bringing in representatives from the appellate and trial courts,

¹ One state provides for such a council in its constitution; twenty states have passed statutes; three have councils as a result of supreme court action. See *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 161.

² Texas includes the following on its judicial council: the chief justice of its supreme court as president, an associate justice of the supreme court, the chief justice of the courts of civil appeals, the presiding judge in each administrative judicial district, the attorney general, the chairmen of the legislative committees on civil jurisprudence, four practicing attorneys, one member of the law faculty of the state university, and three laymen. Kansas has a smaller council: one justice of the supreme court, two judges of different judicial districts, four lawyers, and the chairmen of the judiciary committees of the legislature.

the practicing attorneys, the law-enforcing officers, the legislature, and the public is in a better position to handle this significant task. It might be supposed that accurate statistics relating to courts would be available in all states, but that is not the case and judicial councils, irrespective of their other powers, almost invariably attempt to collect data of this sort.

THE JUDGES

It is a truism that human institutions depend very largely, as far as standards are concerned, upon the people who direct them. Courts are no exception to this rule. Given honest, intelligent, open-minded, well-trained, industrious, and interested judges, almost any court will give a good account of itself, despite the litigious citizens, the members of the bar who may be of the shyster variety, and the pressure of work. Of course, a docket may be so overloaded that even a superman is bogged down and rules may be so outworn that they constitute a heavy burden. Nevertheless, making every allowance for the importance of rules, the character of the judges remains uppermost.

There are two general methods of selecting judges: (1) election by the voters, and (2) appointment, usually by the governor. The earlier judges were appointed and the judges of some of the eastern states and California continue to receive their positions at the hands of the governor, perhaps with the consent of a council or senate. However, the great majority of state judges are chosen by popular election.

There has been a great deal of discussion of the relative merits of appointment by a governor and election by the voters and a wide difference of opinion prevails at present as to which method is superior. The proponents of popular election maintain that the judges should be responsible to the people, that appointment makes for judicial tyranny, bureaucracy, arrogance, and other undesirable attitudes. Advocates of appointment point out the mediocre caliber of many judges chosen by popular election, claim that the courts should be above partisan politics that characterize many elections at which judges are picked, and are of the opinion that the mad scramble for judicial positions in some states brings the courts into bad repute. In Wayne County (Detroit) Michigan, for example, more than one lawyer out of every ten was a candidate for a judicial office in 1935—there were actually 308 candidates

**Methods of
Selection**

**Appoint-
ment
versus
Election**

for some 20 positions. Every sort of promise was made by the candidates; blaring posters set forth the claims of various aspirants; attempts were made to appeal to hyphenated American groups, especially the Poles, on the ground of political recognition.¹

So much depends upon the local situation that it is impossible to lay down conclusions that are valid everywhere. Poor judges have been placed in office by governors and equally inferior ones have received this position at the hands of the voters; excellent choices can be cited under both systems. Governors may be dominated by political bosses, while elections may also be controlled by political bosses. Prosecutor T. E. Dewey charged in 1941 that "two or three men sit down and select candidates for the bench and have them elected," adding that politics still dominated the general sessions, supreme court, and city court benches in New York City.² If there is a tradition pointing in the direction of able and courageous governors in a state, the appointment of judges has much in its favor. If the electorate is alert and responsible, reasonably good choices may be expected under a plan of popular election.

California adopted a constitutional amendment in 1934 which authorizes the governor to appoint appellate and supreme court judges, subject to approval by a commission consisting of the chief justice of the state, the presiding justice of the appellate court of the district involved, and the attorney general.³ At the expiration of a term a judge may have his name put on the ballot and if approved by the voters he continues in office.⁴ Sufficient time has not elapsed to evaluate the California plan in detail—one appointment, involving Professor Radin of the University of California, to a post on the state supreme court was refused by the commission and caused a great furor.

It is sometimes alleged by political workers and others that the quest for able judges is a hopeless one because first-rate lawyers can

¹ For an interesting article on this election, see S. H. Perry, "Shall We Appoint Our Judges?" *Annals of the American Academy of Political and Social Science*, Vol. CLXXXI, pp. 97-108, September, 1935.

² Quoted from *New York Times*, November 29, 1941. He added that conditions had improved however, stating "Under the old system the czars, if they cared to, could pick and elect Dopey Benny Fein" (one of the worst gangsters in New York City at one time).

³ Superior court judges may be brought under this amendment by statutory action.

⁴ For a good article on the California system, see Charles Aikin, "A New Method of Selecting Judges in California," *American Political Science Review*, Vol. XXIX, pp. 472-474, June, 1935.

make so much more money out of private practice that they spurn judicial office. This assertion ignores the presence of a good many able judges now on the bench; moreover, it does not take into account the fact that the profit motive is not always determining. Judicial temperament is somewhat different from practicing-attorney temperament; Japan and several of the European countries go so far as to recognize two professions, making it difficult to cross the dividing line. At any rate there are men of legal knowledge and superior character who find the life of a judge more stimulating than the competition of a lawyer's office. Moreover, the judicial office affords experience which may be of great value to a lawyer or at least to the legal firm of which he is a member. The salaries paid judges may not be strikingly high, but they are usually at the top of the scale which public officials receive. The statements made by political henchmen may have some foundation, but they would seem to be intended to mislead the layman who does not have any personal knowledge of the situation. After certain Chicago judges had been revealed as personal friends and probably even political associates of notorious gangsters and mediocrity among the judges of Cook County had been repeatedly demonstrated, popular criticism ran high. The excuse offered by the political machine was that good lawyers would not accept the posts. A group of public-spirited attorneys then canvassed the field and put up for election an impressive slate of thoroughly qualified and reputable attorneys for judicial offices. Strangely, not a single one was elected, the machine putting in its henchmen as usual. It is certainly not easy because of the political relationships that are involved to secure judges who stand high in their professions, but able judges are to be had if we can ever get away from partisanship in electing judges. Some progress has already been made and campaigns aimed at this goal are being waged in a number of states.¹

Are Able
Judges
Available?

In contrast to the federal practice, states ordinarily give their judges limited tenure. For a time there was a widespread feeling among the voters that two years were enough for judges, but this has given way to an admission that six or more years are not too many for a judge to become familiar with the duties attached to his office. Terms of eight, ten, twelve, and even twenty-one years,

Tenure

¹ Among these states are, according to the newspapers: California, Florida, Indiana, Michigan, Kansas, Washington, Wisconsin, Ohio, Oklahoma, Utah, and South Dakota.

especially for the appellate judges, are now provided by some states;¹ Massachusetts, New Hampshire, and Rhode Island give appointments for indefinite terms pending good behavior. More than that, reelection is commonplace in many places, so that even in those states where the principles of Jacksonian democracy are still very strong individual judges sometimes hold office for fifteen or twenty years.

There is a great range of salaries paid to judges; even within a single state the variation is striking from one type of court to another. Supreme court judges, of course, fare best and are paid from some \$3,000 per year to more than \$25,000.² Salaries of from \$5,000 to \$10,000 are customary—nineteen states allow more than \$7,500. At the other end of the scale are the justices of the peace who receive no fixed salary as a rule and who average only a few hundred dollars per year in fees. Intermediate judges range from \$1,200 or thereabouts to \$10,000 or more;³ even in a single state there may be a spread of from \$4,000 to \$10,000 for these judges, depending upon the population of the district in which their court is located. In comparison with the salaries paid by the states to other officials, judges are quite well off, though they may find themselves with distinctly smaller incomes than attorneys in private practice. Considering that public employment is regularly more modestly compensated than private employment, particularly at the upper levels, it does not seem that the present salary scale of judges presents a serious problem.

It is never satisfactory to continue in public office a person who has demonstrated his lack of fitness for that office either by malfeasance or general incompetence; in the case of a judge it is especially distasteful. Various methods of taking care of such cases are provided by the several states. Impeachment is everywhere available, but it is so cumbersome that it is rarely used and consequently is not of the greatest practical importance. Seven of the states permit judges to be recalled, though this is less common in the case of judges than other state officers. State supreme courts occasionally have

¹ Vermont still has two-year terms; Pennsylvania gives some judges twenty-one year terms. For a table showing tenure in all of the states, see *Book of the States, 1941-1942*, *op. cit.*, pp. 156-157.

² South Dakota pays the lowest salary and New York the highest. Illinois, New Jersey, and Pennsylvania pay more than \$15,000 to supreme court judges. For a table showing salaries paid by all states, see *Book of the States, 1941-1942*, *op. cit.*, pp. 154-155.

³ Rhode Island pays as little as \$1,200 and Massachusetts a minimum of \$1,500; New York pays up to \$15,000.

the authority to remove judges of lower courts from office, while another group of states makes provision for removal by legislative or executive action.¹ All in all, the removal of judges is not made easy, even in those instances where it is probably desirable. Fortunately the number of venal judges is not large, though it is not uncommon to find those who deal very generously with former law partners, political friends, and relatives in so far as favors are to be given out.

LAW APPLIED BY STATE COURTS

State courts are bound by the constitutions of the United States and of their respective states, which they take an oath to uphold. They must take into account the laws passed by Congress inasmuch as a federal statute takes precedence over a state enactment. They should be aware of treaties which the United States may have entered into with foreign countries which extend equal educational and business opportunities to the nationals of those countries, for a state law is ordinarily not permitted to infringe upon a treaty.² International and admiralty law may have some bearing on a few cases, although these ordinarily come within the province of federal courts. Most of the cases which a state court has to decide involve the statutory law of that state, common law, or equity. Occasionally executive orders issued by the governor may apply and it is at least conceivable that the provisions of an interstate compact might come up for application in a certain case.

As we have already noted in discussing the legislative branch of state government,³ there is seldom any reluctance on the part of general assemblies to place upon the statute books large numbers of enacted laws. While the number of statutes Statutory
Law passed varies from state to state and even in a single state from time to time, the 1937 figure of a total of more than twelve thousand for all of the states, or an average of approximately three hundred for each of the states whose legislatures held sessions, is not far out of line. Even though most of these are related to administrative details or financial items rather than of the general law variety, the accretion year after year or biennium after biennium is substantial. The situation is further

¹ In twelve states a judge may be removed by legislative resolution; in nine others by the governor at the request of the legislature.

² It has been alleged that the laws excluding orientals from holding land in certain western states and otherwise engaging on an equal basis with citizens conflict with this general rule

³ See Chap. 40.

complicated by the fact that many laws which appear on the statute books and have never been formally repealed are in fact dead letters because they have been ignored by the public officials since their enactment or because they have been rendered obsolete by changed conditions. Several of the states, including California, Louisiana, and the two Dakotas, have attempted to codify their law, thus withdrawing from the common-law field and supposedly placing all of their law in the statutory category. But even in these states there is a remnant of the common law remaining because the most carefully drafted code is not likely to include every point which may in the future be brought to the courts. A number of states have sought to codify their criminal law, their criminal procedure, their civil procedure, their law relating to liens, and their real-property law, thus furnishing the courts a statutory guide and making it largely unnecessary for them to pore over court decisions not only of their own state but from other states for the purpose of discovering the weight of precedent as to the common law. The National Conference on Uniform State Laws ¹ and the American Law Institute ² have both been active in promoting the transfer of certain territories from the common-law field to the statutory category. Students of the law sometimes raise an objection to wide-scale codification on the ground that it makes for rigidity rather than adaptation to ever changing conditions, that it tends to add to the differences between the laws of the various states, and that even the most carefully prepared codes cannot make provision for every future contingency.

The development of common law and equity in England and their transplantation to the United States has been discussed at an earlier point ³ in connection with federal courts and does not require repetition here. Both common law and equity are of great importance on the state level and indeed have a more intimate relationship to the states than to the national government. Every state with the exception of Louisiana has through the years built up by court decision and usage a body of common law which,

Common Law and Equity ¹ A great deal of pertinent information relating to this body will be found in W. Brooke Graves, *Uniform State Action*, University of North Carolina Press, Chapel Hill, 1934. Some fifty acts have been proposed and more than six hundred state adoptions have been achieved.

² The American Law Institute is interested in several projects, the first being a restatement of the common law so as to provide "orderly expression." It also has worked out a *Model Code of Criminal Procedure* which has had considerable influence on state statutes.

³ See Chap. 21.

though following certain broad outlines, nevertheless has been adapted to meet local conditions. In those few states which have attempted to codify every inch of their legal domain, the role of common law is at present supposed to be unimportant, though in actuality some attention has to be given to it because the code invariably omits certain items. However, in most of the states, even where an effort has been made to codify criminal procedure, civil procedure, real-property law, and so forth, common law occupies an important field. In England it is sometimes stated that approximately two-thirds of the legal field is covered by common law and one-third by statutory law; the situation in the United States is so diverse that no general estimate is possible. In Louisiana the legal system is based on the Napoleonic Code, thus apparently giving no recognition at all to the common law; but it may be added that even in this state there has been an indirect influence exerted by the latter. In California and certain southwestern states codification has reduced the sphere of common law to a small proportion; in other states a third or so of the cases may be decided upon the basis of common law.

Whether law be derived from statute or the precedents laid down in court decisions and usage, it may be divided into two general categories: criminal and civil.

Criminal law is intended to protect the state or community against wrongful acts of persons or groups; these are of two types: misdemeanors and felonies. Misdemeanors are often regarded as **Criminal Law** acts which, though branded illegal, are nevertheless not very serious and indeed may not involve criminal character on the part of an offender. Some of them, for example, exceeding the arbitrary speed limit on a well-paved highway which has few hazards and not much traffic, actually are of this variety, but some states label bribery, the receiving of stolen goods knowingly, and assault and battery as misdemeanors. Certainly these offenses cannot fairly be considered as minor or innocent. The more serious offenses are supposedly classed as felonies. Here are found such crimes as murder, which is the intentional killing of a human being; manslaughter, which involves unintentional killing; burglary, which consists of breaking into private premises with the intent to commit a felony; robbery, which is sometimes confused with burglary but involves the taking of property from a person or in the presence of its owner; larceny, which is the theft of property belonging to another

person; and arson, which is the willful burning of buildings. Forgery, kidnapping, bigamy, and perjury are usually considered felonies, though not always.

Civil law is intended to protect private rights and property and emphasizes the individual rather than the people as a whole, although some civil cases, for example those involving domestic
Civil Law relations, may have significant social implications. While there are numerous civil laws that seek to guarantee the personal security and personal liberty of the individual, the greatest number relate to the safeguarding of private property. The law having to do with real property alone is extensive and complicated, regulating such matters as titles, conveyances, and use. In the case of personal property there are the many laws relating to such things as stocks, bonds, notes, leases, tangibles, trade-marks, and copyrights. Another important type of civil law has to do with torts, which is the term used to designate violations of private rights. Here are the laws applying to trespass, negligence, nuisance, false arrest, alienation of affections of a husband or wife, libel, and slander. Then there are civil laws of various sorts which regulate the making, carrying out, and abrogation of contracts. Another important category has to do with marriage, property rights of husbands and wives, divorce, inheritance, and the disposition of estates left without directions from the deceased. The laws providing for the chartering of corporations, the regulating of their actions thereafter, their dissolution, and liability are very important in this day when so much of the business is carried on by corporations rather than individuals. Almost every one of these branches of the civil law is sufficiently complicated to warrant a separate course extending over a semester or year in a law school, while some of them account for several courses.¹

COURT PROCEDURE

A casual visitor to the courts of various grades in a single state, to say nothing of all of the forty-eight states, would take away a bewildering series of impressions. In the justice of the peace courts, frequently held in the most unseemly places—a farm kitchen, the parlors of an undertaking establishment, the back part of a general store, a moldering room upstairs over a business establishment—procedure is ordinarily

¹ A more extended but reasonably simple discussion of this topic will be found in E. M. Morgan, *Introduction to the Study of Law*, Callaghan and Co., Chicago, 1926.

most informal, depending very largely upon the whim of the particular justice. A police court usually rates a room in some public building, but it is often not well suited for holding court, being dark, poorly ventilated, grimy with smoke and dirt, and inadequately furnished. There are supposed to be definite rules regulating the procedure in such courts; however, the weeping of relative., the chattering of youngsters, the shouting of the court attendants, and the general bustling around are such that it is difficult to recall anything save the noise, the confusion, and the haste—a single case may be disposed of in two or three minutes and is not likely to receive more than ten or fifteen minutes at most. In an intermediate court there is almost always a semblance of order; indeed the proceedings may literally drone away in dullness. Here there is ordinarily a definite procedure, but a casual visitor may not get much of a notion of what is going on because of the length of time required to dispose of a single case and the emphasis upon technicalities. Finally, the appellate courts almost invariably convey a sense of decorum even to ponderousness. The black gowns of the justices and the orderly routine minimize the personal element until it may be difficult to realize that a case being heard involves the life of a man, the right of children to inherit, or any one of a dozen other situations which are vibrant with human hopes, fears, hates, and weaknesses. But despite the conflicting customs, the vagueness of focus, and the respect paid to forms and verbiage of generations long dead there are certain essential elements of judicial procedure which a student of American government may find it worth while to remember. In the succeeding paragraphs an attempt will be made to summarize the conventional steps in criminal and civil procedure.

CRIMINAL PROCEDURE

After an offense has been committed, the accused person is arrested by the police either with or without a warrant. If the police have witnessed the act or are reasonably certain what transpired a **Preliminary Steps** warrant is not necessary, but if there is a question as to guilt a warrant is sworn out by a private person or a police officer before a judge. The accused is released on promise to appear when required or taken to jail to await preliminary examination by a justice of the peace, police magistrate, municipal judge, or intermediate court judge, though in certain instances he may be taken at once before an appropriate judicial officer. If there is undue delay and the accused has been in-

carcerated, he may have his attorney sue out a writ of habeas corpus,¹ which will have the effect of bringing him before a judge to hear the charges against himself. Where he is jailed, he may frequently secure bail,² and hence gain his freedom pending subsequent action. If the preliminary examination reveals evidence pointing to the guilt of the accused and the charge is a serious one, the case is then either transferred to a grand jury or handled by the prosecuting attorney under a process of information. In the former event the accused may have to wait for several weeks until a new grand jury has been called or until a grand jury already serving gets around to a consideration of his case. If he has been released on bail, he may welcome this delay, but if he has to languish in jail, his attitude is likely to be resentful.

Grand juries, consisting of from six to twenty-three citizens plus a foreman, depending upon the state, hear the evidence laid before them by the prosecuting attorney but do not question the accused. Indeed he cannot be compelled legally to testify against himself at any stage unless he desires, though third-degree methods not uncommonly violate this constitutional immunity. If the grand jury is of the opinion ³ that there are reasonable grounds for trial, the accused is indicted and bound over to await the attention of a trial court. Grand juries have now been abandoned entirely in England because they seem to have outlived their usefulness. Twenty-five American states have adopted an arrangement which substitutes action by the prosecuting attorney for an indictment; the prosecutor goes before the judge with his evidence and asks to have the accused held for trial.

In England trial is usually forthcoming within a few weeks or even within a few days of the offense, but in the United States many courts are so far behind with their work that it requires months to get around to a trial in a given case. When the case is finally called, the charge against the accused is read and he is ordered by the judge to state whether he pleads "guilty" or "not guilty." If he is willing to admit his guilt, the judge can impose sentence and the case is disposed of in short order; however, if the accused denies guilt, a

¹ For an explanation of habeas corpus, see Chap. 6.

² Bail consists of putting up a bond secured by money or property or the guarantee of propertied friends that the accused will appear in court when called. With some nine exceptions the states have constitutional provisions relating to bail; the others handle the matter by statute. In some particularly atrocious crimes bail is not permitted.

³ Grand juries do not have to vote unanimously to indict.

**Grand Jury
Indictment
or Informa-
tion**

**The Trial
Jury**

formal trial must be scheduled. The accused decides whether he wants to be tried by a jury or to waive this right ¹ and have the judge act as a jury. If a jury is elected, the first step is to select its members and this sometimes requires several weeks in a hotly contested case where the accused is able to employ a battery of able lawyers. At times more than a thousand persons are examined by the prosecutor and the counsel for the defense before twelve are found who have no connection with the case, declare that they have not read about the case in the newspapers, and in capital cases state that they have no scruples against the death penalty.²

With a jury in the box, the prosecutor takes the stand and presents the case against the accused, delivering an opening speech and calling witnesses to prove his contentions. The questions that may be asked witnesses are limited by the court rules and if the opposing counsel raises an objection to a given question the presiding judge must decide whether it is proper. Then the attorneys for the defense present the case of the accused in a similar fashion. It may be added that both sides are permitted to cross-examine the witnesses of the other so as to challenge testimony, suggest error, and otherwise get at the facts, but the judge has supervision of this and may not allow certain questions. The accused may or may not take the stand at his own discretion; if he takes the stand he must submit to cross-examination by the prosecutor, though he ordinarily cannot be asked direct questions as to whether he is guilty. After this stage has been completed, both sides make speeches summing up their arguments and the testimony of their witnesses; the judge instructs the jury as to the law in the case, if there is a jury; and the case rests with the judge or jury.³

If a jury is used, it retires to a room set aside for its deliberations and proceeds to discuss the case and to ballot. Under the common law a trial jury must be unanimous and that is still frequently required, although some states have modified this in cases that do not involve the death penalty. As soon as the jury reaches a decision or verdict, it informs the judge or if it cannot agree it asks to be discharged. If the judge serves as judge of both facts and law, he

¹ This right is not always accorded. For example, in cases involving capital punishment a jury trial is ordinarily required.

² For a good article on this subject, see J. A. C. Grant, "Methods of Jury Selection," *American Political Science Review*, Vol. XXIV, pp. 117-133, February, 1930.

³ For additional discussion of juries, see Chap. 6 above.

takes a certain amount of time after the case has been presented to reach a decision. When the verdict of the jury or the decision of the judge is ready, the court again convenes and the results are announced. If the accused is acquitted, he is released; if found guilty he is given an opportunity to say a last word in his behalf and sentenced either at once or after a short delay.

If the accused is not satisfied that he has had a fair trial or maintains that the judge has erred in permitting certain questions to be put to witnesses or has misinterpreted the law, an appeal can be taken within a specified period, which may or may not be granted. If the accused is of the opinion that he cannot receive his desserts in a local court, he may request a change of venue which will transfer his case to a court in a near-by county. Punishment varies from a small fine and/or prison sentence to death in the electric chair or life imprisonment. In the case of a prison sentence there is a growing tendency to give an indeterminate sentence which may be finally determined by the conduct of the guilty person in prison.¹

CIVIL PROCEDURE

Some of the procedure in civil cases is like that in criminal cases, but there are important differences. To begin with, a civil case is begun by a plaintiff, who is a private party, rather than by the public prosecutor or the police. The plaintiff has his lawyer prepare a complaint or declaration which sets forth the reasons why he brings the case against another party, who is the defendant. This is presented to the proper court which has its officers serve a copy on the defendant, together with a summons to answer within a specified time. The defendant may admit the facts but deny that they constitute grounds for legal action, in which instance he files a demurrer; or he may deny the facts as set forth. If the judge upholds the demurrer, the case is dismissed; otherwise it is ordinarily scheduled for trial either by a jury or by the judge alone if the parties decide that they do not want a jury—and this is quite commonplace. The selection of a jury proceeds along lines similar to those described in criminal cases, except that it is usually not so difficult to satisfy the attorneys for both sides

¹ Much additional information in regard to criminal procedure is available in such books as E. H. Sutherland, *Criminology*, rev. ed., J. B. Lippincott Company, Philadelphia, 1940; Raymond Moley, *Our Criminal Courts*, Minton, Balch & Company, New York, 1930; and *Politics and Criminal Prosecution*, Minton, Balch & Company, New York, 1929.

and consequently less time is consumed; indeed it is often customary to accept a jury which has already been selected and used for other cases.

The trial itself follows rather closely the pattern of criminal procedure. However, there is no prosecutor, less emotion is displayed as a rule, and rebuttals are used by both sides to close the presentation of the case. But there are the same opening statements from attorneys setting forth what they expect to prove, the same questioning and cross-examination of witnesses, and the general supervision given by the judge to the questions put in both direct and cross-examination. After the attorneys for both sides have rested, the jury retires or the judge takes a recess to consider the evidence and when a verdict or decision is ready, the court is called to hear it.

The Trial

Instead of imposing a fine or prison sentence, civil courts render judgments which, except in equity proceedings, usually involve monetary damages—thus the defendant is ordered to pay a certain sum if the case is decided in favor of the plaintiff. However, there is no very adequate penalty attached to refusal to satisfy a judgment, though in the past those who could not comply were lodged in prison. If the plaintiff can locate property belonging to the defendant, he can have the sheriff levy an execution on that property to the extent necessary to satisfy the judgment, even to selling the property for that purpose. But in thousands of cases defendants make no attempt to pay; plaintiffs are not able to find property upon which to levy; and the judgments remain unsatisfied. This is very frequently what happens in a case arising out of an automobile accident if there is no insurance.¹

**Judgments
and Their
Execution**

In equity cases the decree of the court usually orders some action to be performed or forbids a certain action; a contract may be ordered carried out, for example, or a tenant may be restrained from cutting a door through a partition. If these decrees are ignored, prison for contempt of court follows.

**Equity
Decrees**

Appeals are permitted in both civil and criminal cases under certain circumstances. With the court dockets so heavily loaded and many courts several years behind with their work, it might be supposed that there would be a very strict attitude in the matter of allowing appeals and there is some evidence

**The Problem
of
Appeals**

¹ Good descriptions of civil procedure are given by C. O. Johnson, *Government in the United States*, rev. ed., The Thomas Y. Crowell Company, New York, 1939, pp. 422-423;

which points in this direction. Nevertheless, in general, American courts are very liberal—far more so than in other countries—in permitting appeals both in criminal and civil cases. Attorneys resent any attempt to circumscribe the right to appeal cases to the highest state court and even to the Supreme Court of the United States itself. Moreover, there is a feeling in many quarters that the right to appeal is an integral part of the democratic traditions of the United States. Finally, the complicated character of modern business leads to litigation so intricate that consideration by appellate courts is almost a necessity.

CURRENT PROBLEMS RELATING TO THE COURTS

Several important problems arising out of the administration of justice have been examined in connection with the creation of judicial councils, the selection of judges, and judicial procedure. It remains here to consider several other items which have occasioned discussion.

The costs of bringing cases to states courts are, of course, distinctly smaller than has been pointed out above in connection with the Supreme Court of the United States.¹ But even so they are high enough to make it difficult, if not impossible, for large numbers of people to avail themselves of judicial assistance in settling their troubles. The establishment of municipal courts has done something to bring costs down; in New York and Cincinnati minimum costs are \$2.00, in Baltimore they are \$2.40; in Boston they are \$2.65. In contrast the minimum in Philadelphia has been \$11. Since there are vast numbers of disputes which involve only \$5.00, \$10, or \$20, it must be evident that where the minimum court costs amount to \$5.00 or more and lawyers must be retained at additional expense, it is scarcely feasible to resort to the courts.² In the intermediate courts costs are, of course, usually higher than in the justice and municipal courts and the fees asked by lawyers often run to a large sum. Appellate courts, with their requirements of voluminous records and generous expenditure of time by attorneys, may be so expensive in an ordinary case that a person of moderate means would face bankruptcy were he to indulge in so costly a luxury.

and C. A. Beard, *American Government and Politics*, rev. ed., The Macmillan Company, New York, 1939, pp. 684-688.

¹ See Chap. 22.

² See R. H. Smith, *Justice and the Poor*, 3rd ed., Charles Scribner's Sons, New York, 1924.

Inasmuch as large numbers of civil cases involve less than \$50 and ordinary court costs and attorneys fees go far toward eating such small amounts up, attention has been focused upon reforms in this category. Small-claims courts have been set up in Detroit and a number of other urban centers and these maintain drastically lower scales of costs besides making it unnecessary to employ lawyers. Persons who have been cheated out of their small savings, denied wages of a few dollars, or despoiled of property representing a small amount, may carry their troubles to one of these courts at a cost which may run as low as 35 cents and will seldom exceed \$1.50. Instead of retaining an attorney an injured party goes directly to court, fills out forms indicating the facts in his case, and is informally confronted by his opponent in the presence of the judge who asks questions of both parties intended to get at the truth. Lawyers sometimes disapprove of these courts on the ground that they represent unfair competition, but it seems probable that in most of the cases the amounts are so small and the plaintiffs are so poor that little profit could be expected by the legal fraternity.¹

In order to get at the other aspect of the problem having to do with attorneys' fees, something has been done in the way of setting up legal aid bureaus. Those unable to afford legal counsel may apply to these agencies, either on their own initiative or upon reference by social service organizations. Law students sometimes volunteer for work of this kind,² while more mature attorneys may either give of their time without charge or be employed by these bureaus. A small fee of 50 cents may be charged as a sort of registration fee, but beyond that legal advice is furnished without cost to the poor. Most of the legal aid bureaus are privately supported and have such limited resources that they cannot meet the demands made upon them, particularly when assistance in fighting cases through the courts is needed. They have not received the support of certain lawyers who claim that the people going to them could well afford to hire an attorney. Nevertheless, while they fill only a fraction of the need and are rarely found outside of sizable cities, they serve a useful purpose. A few states, recognizing the importance of the problem, have provided public defenders paid out of the public funds.

¹ An illuminating study has been made of the small-claim litigant in one city by Gustav Schramm. See his *Piedpoudre Courts; A Study of the Small Claim Litigant in the Pittsburgh District*, Legal Aid Society, Pittsburgh, 1928.

² The students in the Harvard Law School, for example, maintain such a bureau.

An old adage states that "Time is money"; this applies to delay in settling litigation as well as to other human activities. If a person injured in a railroad accident has to wait several years before collecting compensation, he may be sorely embarrassed by lack of funds to pay hospital bills and meet family needs. A corporation may have to delay plans entailing millions of dollars until the courts get around to passing on controversial points of law. A survey made in New York City a few years ago revealed that most of the courts in that center of business required from two to four years to dispose of cases after they were filed.¹ Individual cases may be cited which have been before the courts of a single state for seven years or longer. Not all of the delay is necessary, for lawyers may speed their cases up in many instances if they desire and the waiving of a jury trial may cut the time drastically—in the supreme court of Bronx County, New York, a nonjury case could recently be given attention in two months, while a jury case required two and a half years. Unified court systems may also help reduce the delay by sending in temporary judges, improving procedure, and putting pressure on dilatory judges. However, when all of these steps have been taken, the dockets of many courts are still congested and delay is more or less inevitable. Additional judges have been provided in some instances, but the increase in litigation has more than kept pace with additions to personnel. A study of the supreme and circuit courts of New Jersey during the period 1900–1930 revealed that the population increased 168 per cent, the number of judges 27 per cent, and the number of cases 935 per cent during that time.²

It has been suggested that one way to cut down on the delay is to furnish declaratory judgments which clarify the law involved in controversies. There are a good many reasonably minded persons who would be capable of working out disagreements with associates if they could find out exactly what the law on the subject was. The facts are mutually agreed upon by the parties, but attorneys report that the law is not clear on the subject and that the case will have to be submitted to the courts before any settlement is possible. The preparation and presentation of a case requires time even if the docket of a court permits attention within a reasonably

¹ See the *New York Times*, January 14, 1934, as quoted by W. Brooke Graves, *American State Government*, p. 576.

² *Third Report of the Judicial Council of New Jersey*, 1932, p. 91.

short time, whereas application could be made for a ruling on the vague point of law easily and speedily. Approximately three-fourths of the states have now made some provision for declaratory judgments,¹ with the result that numerous cases are kept out of the courts. There is some opposition to this cutting of red tape on the ground that a court is not able to pass on a point of law as a matter of principle, since in the absence of an actual case it is difficult to perceive all of the implications. Lawyers also may display slight enthusiasm for a short cut which has the effect of hurting their business, although some of the farsighted lawyers believe that the long-run effect is not injurious to the legal profession.

Another attack has been made on the problem of congested dockets by the authorization of courts of arbitration and conciliation which are organized by business associations, served by private citizens, but whose decisions are legally binding where parties have agreed beforehand to submit disputes to them. **Arbitration and Conciliation** All of the states with the possible exceptions of Oklahoma and South Dakota now have statutes dealing with arbitration, though arbitration clauses concerning future disputes are enforceable in only thirteen states.² It is maintained that these private agencies not only relieve the ordinary courts, but that they reduce the costs of settling disputes and at least at times are able to achieve agreements which are more sensible than the regular courts. This is due to the fact that experts in the real-estate field arbitrate in cases between realtors; hardware dealers serve when there are disputes involving the hardware business.

There are few if any other countries in the world where technicalities receive as much emphasis in connection with judicial procedure as in the United States. Considering the pride which we take in our business techniques, our dislike of red tape and general **Technical Emphasis** impatience, and our ability to forge ahead into unknown fields in the realms of science, it is paradoxical that this should be the case, for one might logically expect the most efficient and speedy handling of court business. Perhaps the fact that courts are largely controlled by lawyers whose minds are steeped in the traditions of the law may explain in large part the meticulous attention paid to every jot and tittle. The

¹ Twenty-five states have adopted the uniform act and eleven others have their own declaratory judgment acts. See *Book of the States, 1941-1942, op. cit.*, p. 162.

² For a table showing provisions in the various states, see *Book of the States, 1941-1942, op. cit.*, p. 169.

heritage of our legal system from England also perhaps enters in, though it is interesting to note that England has abandoned the grand jury system, simplified procedure, and cut delay to a mere fraction of that characteristic of American courts. But whatever the cause, it remains true that the courts of the United States are regarded with envious eyes by lawyers in the rest of the world because the very emphasis on technicalities adds to the business of members of the bar in no small way. When a really ingenious lawyer whose heart is in a criminal case has exhausted all of the technical motions that are permitted in most of the states, a considerable amount of time and expense have accrued. Then there is the exhaustive examination of prospective jurors which may require several weeks, to say nothing of the expense to the public treasury. If a judge permits a question to be put to the witnesses which brings out the truth but at the same time violates some rule of evidence, a new trial is not uncommonly ordered. The omission of a single "l" or "r" by a clerk or typist who is copying an indictment or some other part of the record in a case has more than once been made the occasion to throw out the work of weeks and even months.

The appellate courts have made the most incredible decisions on some obscure point which has nothing to do with the guilt or innocence of the parties involved. In civil cases the appellate courts have been known to send a single case back a half dozen times to the lower courts on some more or less insignificant grounds. Of course, this works a great hardship on the plaintiff who may discover that court costs and lawyers fees have more than eaten up the \$3,000 or \$4,000 which he originally set out to collect. If general statutes are involved in these technical displays, there may be grave uncertainty over a period of years as to some highly important matter which concerns thousands of people. Thus the supreme court of Michigan, ruling on whether the owners of land abutting on Lake Michigan enjoyed title to the high-water mark or only to the meander line, which in some instances was removed hundreds of feet from the water, reversed itself four times in less than a decade.

There has been encouraging progress in some of the states toward reducing the more or less meaningless incidentals in connection with the administration of the law. Revised rules of procedure have made their appearance; pretrial negotiations make it possible to settle large

**Appellate
Courts and
Technical-
ities**

numbers of civil cases out of court. It would create a considerable commotion at present if a supreme court reversed a trial court because the word "robbery" in the indictment was in one instance spelled with a single "b" due to the oversight of the grand jury clerk; or if the clerk of the court in which a case originated neglected to sign the transcript when a change of venue was taken to an adjoining county.

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CHAPTER XLII

STATE ADMINISTRATION

IT HAS been pointed out in several connections that the emphasis on the administrative side of government is one of the major characteristics of the current American political scene. The activities of the states in this sphere have perhaps received less publicity than those of the national government, but they are exceedingly important and account in large measure for the notable increase in the cost of state government. Some of them, for example the old-age assistance and dependent-children programs, are closely related to administrative activities of the national government, being controlled as to general standards by the grant-in-aid system of the latter. Others are local in character, depending upon the diverse socioeconomic backgrounds of the several states as well as upon varying political psychology. It is, of course, to be expected that a populous state which is highly industrialized will maintain a more elaborate administrative setup than one which is sparsely settled and agricultural in character. Nevertheless, even the smallest and poorest of the states are currently carrying on administrative programs which would have seemed distinctly ambitious as recently as a decade ago.

ADMINISTRATIVE DEVELOPMENT AMONG THE STATES

The states which were in existence a hundred years or more ago found themselves confronted with certain administrative problems which are still to be encountered, though usually in a more complicated form. Even at that early period states found it necessary to raise funds for meeting the expenses of their operations and that involved the levying and collecting of taxes. Records of one kind and another had to be kept by the financial officers as well as by a general functionary commonly designated a secretary of state. A few public works, such as canals and highways, were sometimes undertaken by states, though these were more commonly left in the hands of private toll companies or local governments. All in all, it would not be accurate to say that there were no administrative tasks to be performed by the states at that time, but in com-

Early
Nine-
teenth
Century

ADMINISTRATION OF MASSACHUSETTS 1941

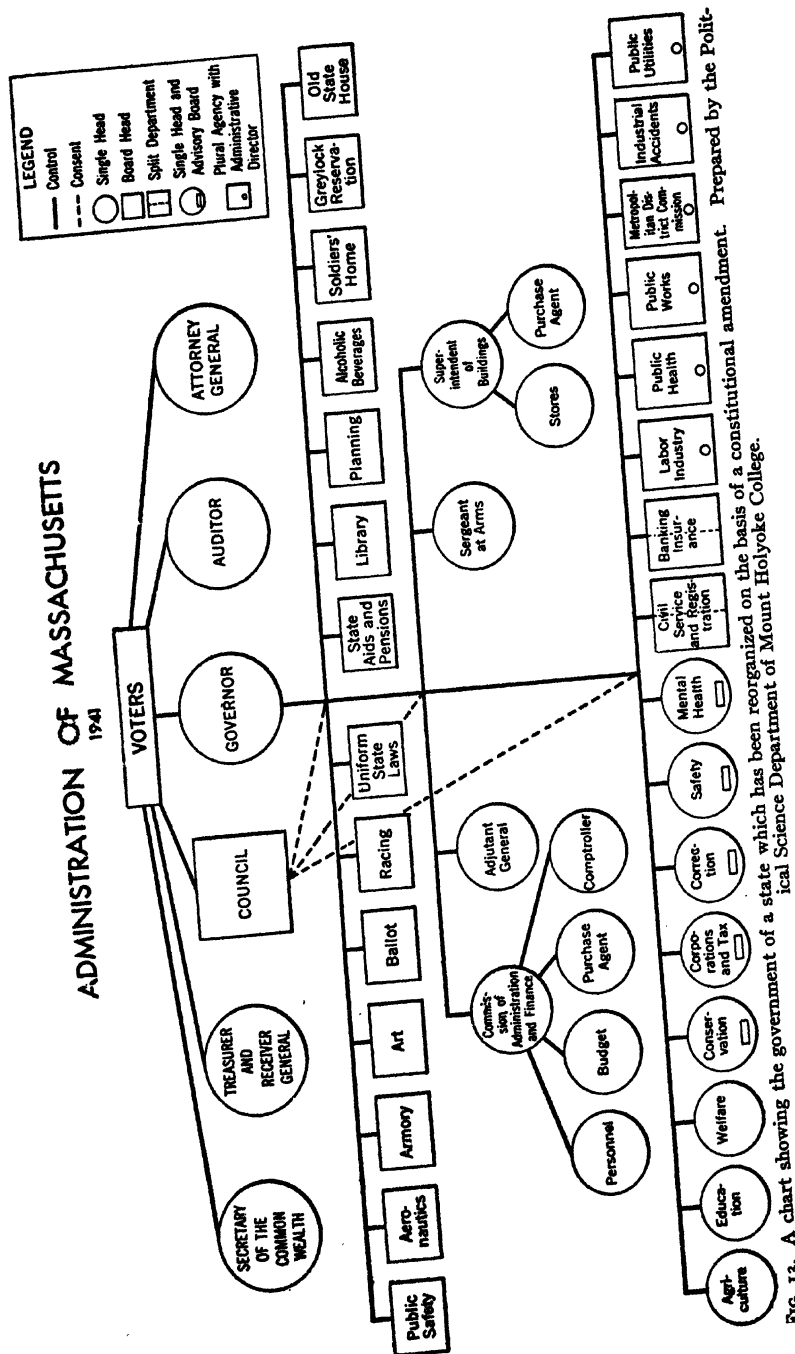


FIG. 13. A chart showing the government of a state which has been reorganized on the basis of a constitutional amendment. Prepared by the Political Science Department of Mount Holyoke College.

parison with the elaborate and costly current programs these early efforts seem almost negligible.

As states became more established, their administrative responsibilities increased as a matter of course. But far more significant than that were several other factors which increasingly became apparent toward the end of the nineteenth century. As the century opened, education was largely in the hands of private individuals and institutions, which, of course, received those who were able to pay for instruction. Broadening democracy was accompanied by a widespread demand for public educational facilities. The greater part of this burden fell upon the local governments, but the states, encouraged in many instances by the generous provisions of the federal land-grant college act,¹ undertook to set up colleges and universities. In order to coordinate the local efforts it increasingly became clear that a state department of public instruction was needed. Then, too, the impact of the industrial revolution on those states which depended upon manufacturing and mining brought about problems which many thoughtful people regarded as calling for state attention. While some factory owners voluntarily maintained proper working conditions, others who were dominated by avarice refused to spend a penny to protect dangerous machinery or to install sanitary facilities. Where workers fell prey to the accidents arising out of their employment, companies usually refused to assume responsibility; yet there were often no private means and hence the taxpayer had to support the victims on a charitable basis. The states finally had to take cognizance of this situation and enact statutes providing for safeguards and eventually for workmen's compensation. The enforcement of such regulations necessitated some administrative machinery. During this middle period the problems of crime and insanity came more and more to the fore, with the result that the endeavors of local governments and private individuals proved inadequate. States, therefore, found themselves faced with the necessity of providing penitentiaries and insane asylums.

Although many of the problems which constitute the basis for state administrative activities date back into the nineteenth century, it has been only during the present century that the states have recognized their full responsibility. Thus to

**The
Middle
Period**

**The
Modern
Period**

¹ Some state universities had been established before the national government passed the Morrill Act in 1862.

a very considerable extent state administration may be regarded as a development of the last quarter or at most half of a century. At least the activities of this sort which were carried on by the states during the early and middle periods now seem so modest that they are frequently ignored. The financial problems dating from the very earliest days became increasingly intensified and finally led to elaborate accounting systems, tax commissions, boards of review, budget bureaus, and state supervision of local finances which will be dealt with in some detail in the next chapter. The complex relations existing between labor and capital-management resulted in a general introduction of workmen's compensation commissions as well as labor departments. Educational facilities multiplied; state licensing of teachers became commonplace; state adoption of textbooks and curriculum standards became popular in certain quarters. The farmers and business men demanded administrative agencies which would assist them in dealing with their problems. The ruthless practices of the railroads, electric and gas utilities, telephone companies, and other public-service enterprises made it necessary to establish state commissions for their regulation. The highest crime rate among civilized countries and a rapidly increasing insanity rate made the old institutions inadequate and resulted in expanded state departments of corrections and institutions. It would require more space than is available to go on with the list of administrative activities which states have assumed during recent years; perhaps it will suffice to remark that there is at present hardly a field of human interest which does not come in for attention by at least some of the states.¹

From the foregoing paragraphs it should be apparent that the administrative side of state government came into being a piece here and a bit there. As new problems arose or as pressure made it expedient to take cognizance of old problems, state legislatures created this agency and added to the responsibilities of that department which already existed. In general, there was a tendency to establish additional administrative agencies to take over new tasks, since that usually provided more jobs which could be used to reward faithful political followers. Prior to the grand rush of recent years legislatures at least had the time to weigh the

**The
Problem of
Piecemeal
Growth**

¹ For a very good discussion of the growth of the administrative side of government, see L. D. White, *Introduction to the Study of Public Administration*, rev. ed., The Macmillan Company, New York, 1939, Chap. 2.

matter of where to place the responsibility for a new function. But when several new administrative fields were taken in during the course of a single legislative session of a few weeks and numerous changes made in already existing agencies, it was difficult for even the most conscientious members to keep in mind the important essentials of coordination and unity. The result was a conglomeration of agencies of various sorts which often found themselves without clear demarcation as to functions and ordinarily with no central authority to furnish adequate supervision. At the point of greatest confusion New York state discovered that more than 160 administrative agencies were attempting to keep out of each other's way, fighting for the same function, following diverse policies which they had seen fit to adopt, and otherwise adding to the confusion.¹ Other states had not gone so far as New York because their populations and problems hardly justified it, but even average-size states frequently found themselves with a hundred separate administrative departments, agencies, commissions, and miscellaneous establishments. Needless to say, the inefficiency, waste, and conflict incident to such a setup reached high levels; the wonder is that the people were willing to tolerate the chaotic situation.

REORGANIZATION EFFORTS

Though people are in general long-suffering, they finally became cognizant of the iniquities of the system in many of the states. As early as 1891 the governor of Massachusetts prepared a message for the legislature of that state in which he called attention to the helter-skelter character of administrative organization and urged that consolidation be undertaken. But he was a voice crying in the wilderness and it was not until 1909 or thereabouts that any general movement got under way. Early in January, 1910, Governor Charles E. Hughes of New York included the following statement in his message to the legislature: "It would be an improvement, I believe, in state administration if the executive responsibility were centered in the governor who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state officers." President Taft's Commission on Economy and Efficiency made a report to Congress in 1912 which stirred up interest among the states and led to the establishment of several state committees of the

¹ See New York Bureau of Municipal Research, *Government of the State of New York: A Survey of Its Organization and Functions*, Institute of Public Administration, New York, 1915.

same character. The New York constitutional convention of 1915 proposed a reorganization in the constitution which it submitted to the voters in that year, but this had the misfortune to be defeated.

It remained to Illinois to make the first concrete achievement in administrative reorganization. Governor F. O. Lowden, one of the **Actual Achievements** really able governors during the last half a century, became much interested in a more orderly and centralized administrative system and in 1917 succeeded in persuading the legislature to adopt a fairly comprehensive reorganization plan. The elective offices were perforce left untouched because of their constitutional basis, but approximately one hundred departments, boards, and offices were consolidated into ten general departments, having to do with finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, conservation, registration and education, and insurance.¹ Twenty-seven other states by 1941 had followed Illinois in undertaking complete or partial reorganizations of their administrative machinery. Approximately a dozen states accomplished reorganizations during the single decade of 1930-1939, while a number of other states made changes supplementing earlier efforts.²

States have accomplished their reorganizations both through constitutional amendment and statutory enactment, but the latter method **Legal Basis of Reorganization** has been far more commonplace. Only three states³ out of the twenty-eight that could point to records in this field in 1941 had followed the constitutional amendment route, leaving twenty-five to base their changes on statutes. In a way it is disappointing that so many of the states have chosen to follow the statutory route because that has in almost every instance necessitated compromise. Constitutions, even of the older variety, often provide for certain elective positions, such as secretary of state, state treasurer, auditor, and commissioner of education; consequently reorganization by statute leaves these offices on an elective basis and more or less independent of the governor. On the other hand, constitutional amendments are regarded with suspicion in some of the states, par-

¹ For a more detailed discussion of the Illinois reorganization, see A. E. Buck, *The Reorganization of State Governments in the United States*, Columbia University Press, New York, 1938, pp. 86-92.

² For a table showing recent changes, see the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, pp. 62-69.

³ These states are New York, Massachusetts, and Virginia.

ticularly when they involve far-reaching changes in the administrative departments. The legislature may be convinced that a reconstruction is desirable, but it does not want to tie itself down by writing detailed changes into the constitution. Inasmuch as conditions are constantly changing, there is a real objection to freezing administration organization in constitutional amendment; hence states which use this method are well advised to lay down only broad principles, leaving the details to be added by the general assembly as occasion may arise.

Some states have apparently believed that any reconstruction of administrative agencies, whether arrived at through careful studies or not, constitutes reorganization. And it is only fair to note that the statistics offered above do not differentiate among the states, despite the fact that some of them have done their work well while others have proceeded in a slipshod manner. The Illinois reorganization followed with reasonable faithfulness a thorough analysis and study which Professor Fairlie and a staff of trained experts carried on during a period of months. In contrast the Indiana reorganization was rushed through by Governor McNutt without any attempt to survey the problems involved. Professional experts were not consulted; political expediency determined decisions; the greatest secrecy enshrouded the deliberations; and the result has been described by fair-minded persons as "fantastic." Mr. A. E. Buck of the New York Institute of Public Administration, who speaks with authority in this field, has laid down six fundamentals¹ which he maintains actual experience of the states has dictated. Briefly summarized these are as follows:

Basic Elements of Reorganization

1. Concentration of authority and responsibility.
2. Departmentalization, or functional integration.
3. Undesirability of boards for purely administrative work.
4. Coordination of the staff services of administration.
5. Provision for an independent audit.
6. Recognition of a governor's cabinet.

Most of these items have been discussed in some other connection and do not require detailed elaboration here. In discussing the functions of the governor, for example, it was emphasized that all of the administrative agencies should be directly responsible to that officer and that a governor's cabinet serves a useful purpose.² In the chapter

¹ A. E. Buck, *op. cit.*, pp. 14-15.

² See Chap. 38.

succeeding this one the importance of an independent audit is pointed out.¹ Later in this chapter we will examine the board type of organization. At this point, therefore, perhaps it will suffice to stress the necessity of arranging the various functions in a logical rather than a haphazard manner under the general departments which usually emerge from a reorganization effort. If related services are widely separated, there is bound to be lost motion and lack of proper contact. Conversely, if a general department is made up of subdivisions which perform widely varying functions, there is likely to be conflict, lack of integration, and, in short, trouble. It is here that the expert analysis is especially important. Almost any politician can make the governor the residuary of authority; a cabinet is easily understood; boards have a wide reputation for inefficiency where decisive action is required; and an independent audit is familiar even to amateurs as something to be desired. But no amount of lip service to the principle of integration will give integration, since that depends upon a careful study of a large number of agencies and functions.

If a state has not set itself to the task of reorganization, the number of separate administrative departments is likely to be large, even if the state is sparsely populated and dependent for the most part on agriculture. It is not at all uncommon to find anywhere from fifty to one hundred separate departments, boards, offices, and other independent establishments in such a state. Where reorganization has taken place, a great deal depends upon whether it has been partial or complete as well as upon the complexity of the problems. Ordinarily a complete reorganization will consolidate the administrative agencies into anywhere from half a dozen to fifteen general departments. No categorical number can be stipulated for every state because of the diversity of population and problems, but the general rule is that there should be no more than are required to handle satisfactorily the various administrative functions entrusted to the state government. On the other hand, it is not a wise policy to go to an extreme in consolidating, for where functions of widely diverse character are crammed into a single department there will probably be trouble.

It has been noted that several states, including California, Virginia, Nebraska, Tennessee, and Washington, have not been content to reorganize their administrative systems and then rest on their oars. Con-

¹ See Chap. 43.

[illegible]

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sidering the changes which have taken place in the state governments during the last decade, this attitude on the part of a state impresses the observer as a very wise one, for even the best reorganization is likely to become antiquated after a few years have elapsed. Moreover, legislatures are at work at least every two years grinding out new laws which relate to administration, and it is probable that in most states the residuum of a few years of legislative action will be enough to slow the ship of state, much as barnacles interfere with the rapid movement of an actual ship. Mistakes may be made even by the best of experts, thus pointing the way to corrective modifications in the future.

**Need for
Frequent
Examina-
tion**

**Proposals
for Other
Types of
Reorgan-
ization**

Some students of the subject are of the opinion that the reorganizations that have been effected in the past are hardly sound even on the ground of fundamentals. Thus Professor Kirk Porter objects to the consolidating of all administrative agencies into eight or ten general departments which are directly responsible to the governor, arguing that the governor will have enough to do supervising the finance, personnel, and other staff agencies. Professor Porter proposes placing the line services, such as public welfare, conservation, and public health, under independent boards made up of laymen who have long terms which are overlapping.¹ Professor Read Bain would go even further in the direction of relieving the governor of general administrative responsibility; he has advocated a state manager chosen by and responsible to a small unicameral legislature which would be in session more or less continuously.² The governor under his plan would be scarcely more than a figurehead to represent the state on formal occasions. These proposals are very interesting and indicate that there is a difference of opinion as to what the present should emphasize as well as to what the future will bring forth. The transplanting of the council-manager principle, which has demonstrated its effectiveness in city government during a period of more than twenty-five years,³ into the state field would go far in bringing about the changes proposed by Mr. Bain. However, in so far as one can judge from the actual experience of the states the trend is still strongly in the direction of strengthening the governor, concentrating

¹ See Kirk Porter, *State Administration*, F. S. Crofts & Co., New York, 1938.

² See *American Political Science Review*, Vol. XXXII, pp. 495ff., June, 1938.

³ For a recent discussion of this plan, see Harold A. Stone, Don K. Price, and others, *Council-Manager Government in the United States*, Public Administration Service, Chicago, 1940.

authority in his office, and making him generally responsible for state administration.

TYPES OF ADMINISTRATIVE ORGANIZATION

There are three principal types of organization which states have chosen for their administrative agencies: (1) single-head, (2) board, and (3) combination. Various modifications of these basic forms may be observed in operation, thus contributing to a complicated picture of organization as a whole.

Students of public administration generally prefer the administrative agency which is placed in charge of a single head, though they are by no means unanimous in their opinion.¹ However, if a **Single-head** hierarchy is to be established which finally heads up in the governor, the single-head agency is logical. Governors include the directors* of single-head departments in their cabinets and find it feasible to deal with complicated administrative problems by holding eight or ten heads responsible for what goes on in their departments. The general departments are subdivided into sections and each one is placed in charge of a chief who is responsible to the department head. Responsibility under such an organizational plan is clearly defined and easily supervised. Moreover, a single head can be expected to follow a more or less consistent policy in contrast to the compromise decisions which emanate from boards. Action in a single-head department is prompt and decisive, at least in theory. On the other hand, this type of organization does not permit the deliberation and exchange of varying points of view which some consider desirable in certain fields of state activity. In a single-head department it is not to be expected that the conservative, the liberal, and the middle-of-the-road ideologies will be represented in the policies adopted, for a single director is responsible.

The board type of organization has been very popular in the past and continues to find supporters, judging from the practices of the states. In this type three or more persons are placed in charge of an administrative agency and decisions as to what **Board** shall be done are arrived at jointly by these board members. An agreement may be made to the effect that certain tasks will be performed by individual members, but important matters are discussed and decided

¹ For a good discussion of the difference between the single-head and the board type, see L. D. White, *op. cit.*, pp. 89-92.

by the board as a whole. This plan permits the representation of diverse interests, embodies the theory of checks and balances in a modified form, and in general encourages deliberation. In practice, it has been found that the members frequently find it impossible to agree, with the result that valuable time may be consumed, deadlocks may result, and compromises will eventually determine the policy. Where prompt and clear-cut action is required, for example in an agency charged with maintaining law and order, the delay and conflict so often incident to the board type of organization are very serious weaknesses and may cause almost a breakdown in operation. However, if a policy has to be worked out of many diverse points of view and there is no particular haste, the board may offer advantages. Public-service regulatory agencies and other quasi-judicial departments almost invariably fall into this category. Ordinarily it is agreed that the size of boards should be kept within reasonable limits; hence those which have more than advisory functions usually consist of from three to nine members.

In order to avoid the weaknesses of the two types discussed above and to realize the advantages which they afford, there has been a hybrid plan developed which makes use of both. A board is used to determine policies; an administrator is at hand to see that the policies are put into effect and to take charge of the routine work of the department. Thus it is possible to have different points of view represented and policies worked out which will recognize diverse interests. At the same time the delay and conflict of the pure board type of organization are minimized. Perhaps the chief problem in this type is to define the role of the board and set forth the duties of the administrator. Experience has indicated that it is not enough to leave a division of authority up to those involved, for an ambitious administrator may attempt to relegate the board to a place of insignificance, while a meddlesome board may interfere to such an extent in the routine operation of the agency that the life of the administrator becomes intolerable. On the surface it does not seem particularly difficult to draw the line between the functions entrusted to each, but in practice this is frequently almost impossible. Unless the authority of each can be clearly defined, more or less trouble may be expected; furthermore, there is a question whether any advantage is to be gained over what could be realized under the single-head or the board type. If the board is to be regarded as purely advisory in character, then it is relatively simple to detail the functions of the administrator, since he

**Combina-
tion Type**

is really not dependent upon the board at all unless he chooses to follow the advice given. But if the board is to be given an actual voice in the operation of the agency—and that is more or less fundamental if the combination type of organization is to be more than purely formal—then the problem of division of authority becomes most difficult. This plan of organization has been used most commonly in connection with education, public health, and public welfare.

In those states which have not undertaken an administrative reorganization it is probable that all of the three types described above will be found. The older departments will doubtless be in charge of an elective official, such as the state treasurer or secretary of state. Newer departments having to do with public works and related functions may well be headed by directors appointed by and responsible to the governor. Boards may be expected in the case of the public-service commission, the civil service agency, and the state universities. Departments having to do with welfare, health, and education may follow the board or the single-head plan, but in many instances they will make use of the combination plan. Inasmuch as some of these directors and board members will be elected, others appointed by the governors, still others named by judges, elected administrative officials, or boards, it may be readily seen that the entire system is by no means orderly.

**Organiza-
tion under
a Decen-
tralized
System**

In those states which have reorganized their administrative departments there is likely to be greater uniformity of pattern, but even so, all three types of organization may find a place. If all of the administrative agencies have been consolidated into eight to fifteen general departments, it is probable that the single-head type will be used as far as possible. However, inas-

**Organiza-
tion under
a Central-
ized
System**

much as the states have not ordinarily employed constitutional amendments to accomplish reorganization, there may be several departments which are headed by officials elected by the voters rather than appointed by and responsible to the governor. While the single-head type is generally preferred under the centralized system, it is not uncommon to find a combination plan used, with the director given a board for advisory purposes. Departments of public welfare, health, and education are especially prone to such organizations even where centralization has been achieved. The board in its pure form is ordinarily less popular under the centralized system, though it always finds a place somewhere in connection with administration. Those

states which have only partially reorganized may leave the regulatory boards, such as the public-service commission, untouched and more or less to the side of the main structure. Where reorganization covers everything, regulatory commissions can hardly be abandoned and yet at the same time need to be integrated with the other agencies; hence they may be placed under one of the general departments in a more or less autonomous position. In such instances they are responsible to the single head of the department in so far as routine matters, such as purchasing of supplies, budget-making, personnel, and reporting, are concerned, but they are independent in the exercise of their quasi-judicial functions, which relate to the fixing of utility rates, the review of local government expenditures, and so forth. The fact that the members of these commissions are appointed by the governor rather than by the director of the department in which the commission is placed for purposes of routine control makes this independence possible.

STAFF AND LINE AGENCIES

The administrative services which the states provide fall into two general classes: staff and line. Staff services include such activities as personnel, finance, planning, the keeping of records, the purchasing of supplies, and the furnishing of legal advice. These do not directly affect the citizens but are highly important in the general operations of state government. Line services, on the other hand, are those which a state furnishes its inhabitants: for example, educational facilities, protection of person and property, old-age assistance, and the regulation of public-utility rates. In the remainder of this chapter and the next chapter we shall give attention to the staff services which are being carried on by the forty-eight states. In a succeeding chapter an attempt will be made to examine some of the many line activities which states are now engaged in.

PUBLIC PERSONNEL ADMINISTRATION

Though all of the states together do not have as large a pay roll as the national government, they employ large numbers of persons in various capacities—on January 1, 1941, some 522,000, to be exact.¹ Nevertheless, the approximately 26,000 employees of Illinois, to take one of the most sizable pay rolls, constitute a small army, while the

¹ This is exclusive of educational institutions. See Bureau of the Census, *Public Employment in the United States: 1941*, Government Printing Office, Washington, 1941, p. 5.

10,000 or so employees of many less populous states are by no means negligible.¹ The relationship between superior governmental standards and the qualifications of state employees is very intimate; indeed it is not too much to say that nothing can make up for the lack of well-trained and conscientious public servants.² All too many of the states have not realized this, or if they have their conduct has certainly not indicated it. In the chapter devoted to the functions of the governor³ it was pointed out how large a place the spoils system has had in filling the rank and file of state jobs, resulting sometimes in the throwing out of more than 90 per cent of all employees in favor of the protégés of the party which has recently been victorious at the polls. There is no purpose in repeating that discussion here—indeed, it hardly belongs under the label “public-personnel administration” at all, since the filling of jobs is done by political captains and committees rather than by the state itself. An increasingly large number of states are taking cognizance of the intolerable character of the spoils system as a method of making appointments to public positions and their accomplishments deserve attention.

As far back as 1883 New York established a public personnel system which was based at least in theory on the principle that state jobs should be filled by those who have adequate training, experience, and personal qualifications. Two years later Massachusetts followed suit and it seemed that the movement in this direction might spread rapidly. But unfortunately the other states remained indifferent and it was not until 1905 that Wisconsin and Illinois provided for civil service machinery. Again there seemed some likelihood that many of the states would follow the example set by these four states, particularly after Colorado and New Jersey⁴ had joined the group. But only three states, California, Maryland, and Ohio,⁵ were added to the list during the next thirty years. Then came the federal social security program with its emphasis upon merit administration and this together with other factors caused eleven states to make provision for public personnel systems during the years

Growth of
the Merit
System

¹ State employees in New Jersey increased from 4,500 in 1921 to 15,941 in 1941. Salaries jumped from \$6,000,000 to \$26,675,584. See the *New York Times*, November 30, 1941.

² For an up-to-date discussion of this problem, see W. E. Mosher and J. D. Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941.

³ See Chap. 38.

⁴ Colorado and New Jersey established systems in 1907 and 1908 respectively.

⁵ California and Ohio made provision for such a system in 1913, while Maryland did not take action until 1921.

1937-1941.¹ As of April 1, 1941, twenty of the forty-eight states had made provision for public personnel systems which covered all or a considerable portion of their state employees below the rank of agency chief. The remaining twenty-eight states could not point to extensive merit coverage, but they were compelled to tolerate more or less modern personnel machinery as far as their social security agencies were concerned because of the standards stipulated in the grant-in-aid program of the national government.²

It might be supposed that the adoption of the merit principle as a basis for public employment would automatically result in the establishment of efficient public personnel agencies. Unfortunately it is not safe to make that assumption, since some states have contented themselves with little more than lip service to the merit system. Thus when it is stated that twenty states have placed all or a substantial part of their employees under the merit system, it must not be concluded that all is necessarily well in those states. A few of these states can point to reasonably consistent records, but most of those which have had any considerable experience have found the fight a difficult one. Unfriendly legislatures and governors have at times virtually brought the systems to nought by refusing appropriations, appointing political henchmen to administer the machinery, and evading the fundamental requirement of permanent tenure by making large numbers of temporary appointments. At times so-called "merit" systems have been so weak and so thoroughly under the thumb of politicians that it has been absurd to refer to merit appointments at all. During the last decade there has been a rising sentiment among the people in favor of modern personnel practices in public employment and that has done much to bolster up the state systems. Though there is much room for improvement in the states now operating under the merit principle, it is encouraging to note that standards have recently reached an all-time high.

Six of the twenty states which had modern personnel practices in 1941 had written provisions into their state constitutions relating to such services. In some instances the amendment merely authorizes legislative action—in Louisiana, for example, the legislature is given the power by a two-thirds vote to amend or

¹ These states were: Alabama, Connecticut, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, New Mexico, Rhode Island, and Tennessee.

² For a table showing the provisions in these states, see the *Book of the States, 1941-1942*, op. cit., p. 225.

repeal the provision requiring a merit system. In Michigan, on the other hand, the people, looking back upon a recent experience in which an unfriendly legislature virtually wrecked a public personnel program, adopted a constitutional amendment which firmly establishes the merit principle and gives the Civil Service Commission authority to proceed without legislative action. The fourteen states which depend entirely upon statutory authorization have had diverse experiences. In general, there is much to be said in favor of founding a personnel agency upon a constitutional amendment, especially if the amendment is carefully drafted. However, the nature of the amending process and public sentiment are such in some states that it is almost necessary to rely on ordinary statute, as unstable as that may sometimes be.

Six of the states, following the national example, have established Civil Service Commissions to administer their personnel programs. Seven states provide civil service departments, while four prefer state personnel boards.¹ In most cases a board of at least three members, representing the two major political parties, is created to determine policies and supervise the general operation. The members of these boards are usually not full-time state officials, though in Ohio they are paid on that basis. The approved practice is to employ a professionally trained person on a full-time basis to administer the program under the supervision of the board. Under this director or manager there are numerous examiners, clerks, stenographers, investigators, and other employees. In eight of the states² the state personnel agency is authorized to assist the local governments in drafting examinations and preparing eligible lists.

There is a considerable diversity among the states providing modern public personnel facilities as to the powers and duties of the central personnel agency. In those cases where many exemptions are specified, the classified service is, of course, more limited than in other states where all state positions except those which determine policy are covered. In almost every instance examinations are given and eligible lists prepared by the personnel department; frequently, though not always, responsibility for position classification, service records, transfer, disciplinary action, vacation and sick leave, and similar matters is entrusted to the agency. Some of the

Civil Serv-
ice Ma-
chinery

Procedure

¹ For a table showing the provisions made by the various states, see the *Book of the States, 1941-1942, op. cit.*, p. 224.

² These are as follows: California, Louisiana, Maryland, Minnesota, New Jersey, New York, Rhode Island, and Wisconsin.

states have established enviable reputations along these lines, while others have been satisfied with mediocre records.¹ In general, the states have not been so progressive as the national government in providing retirement systems and in certain other respects. However, the examination procedure, certification of eligibles, and related practices are similar to those which have been discussed in some detail in connection with the federal system.²

Even in the backward states there has been a notable increase in the number of professional and scientific workers in state employment during recent years. The assumption by the states of functions having to do with health, public welfare, education, laboratory experimentation, housing, public utilities, and many other more or less technical fields doubtless enters into this trend. But in addition there is a growing recognition even among political henchmen that some state positions require more than party faithfulness, physical fitness, and good intentions. Needless to say, the induction of these technically trained people has had a very wholesome effect, improving standards even in those departments which are most intimately tied up with politics.

RECORDS, PLANNING, AND MISCELLANEOUS FUNCTIONS

With state administration reaching new highs, it is obvious that there is an immense amount of work to be done in keeping records. Almost all of the administrative departments do this to a greater or less extent, but the offices of secretary of state, state treasurer, and state comptroller or auditor are especially important in this connection. The keeping of financial records will be discussed in the next chapter; it remains here to look briefly at the functions of the office of secretary of state. Every state maintains such an office, though seven states³ provide for the selection of a secretary of state by appointment while the other forty-one make him elective. The office which this official presides over has long been a sort of odds-and-ends department, which is given duties which do not seem to fit into any other agency; consequently there is considerable diversity. In all but four⁴ of the states election laws are administered by this

¹ For a recent statement on this point, see the *Book of the States, 1941-1942, op. cit.*, p. 223. ² See Chap. 24.

³ These states are: Delaware, Maryland, New Jersey, New York, Pennsylvania, Texas, and Virginia.

⁴ Delaware, North Carolina, Kentucky, and Oklahoma.

department; likewise in forty-four states ¹ this department acts as custodian of legislative bills, acts, records, and so forth. In three-fourths of the states the secretary of state publishes the statutes which are enacted by each session of the general assembly, while in forty-four states ² he attests executive documents. In thirteen states this department keeps a register of motor vehicles; in nine states it registers securities; and in thirty-three states it has charge of the state archives.³

As state problems have become more complicated, it has been increasingly apparent that planning is essential if substantial progress is to be made. Almost every state administrative agency which is at all alert carries on a certain amount of planning, but in addition numerous planning commissions and boards have been set up to draft broader plans, particularly in the conservation, land-use, and economic fields. At one time every state provided either by statute ⁴ or executive order for a planning agency, but in some six instances ⁵ these have been abolished or allowed to lapse. The National Resources Planning Board had a great deal to do with the creation of these state planning agencies and has worked through them in numerous instances. In 1941 thirty state planning agencies were engaged in studying land use; twenty-six, water use; ten, minerals; twenty-three, transportation facilities; fifteen, public works; twenty-seven, economic and industrial resources; six, educational facilities; twenty-four, recreational facilities; nine, health and welfare; nineteen, public finance; twenty-two, local planning; and twenty-seven, defense.⁶ Unfortunately there has been no widespread sentiment for the adequate support of these agencies, perhaps because the rank and file of the people have had little understanding of what they were expected to do. In some instances planning boards have been sinecures for political favorites, with little or nothing to show for the expenditures of state funds. With very few exceptions, the boards have received such niggardly appropriations that they have found it almost impossible to accomplish what they have set out to do, even making allowance for federal assistance. In the fiscal year 1940-1941 twelve states made no

State
Planning
Activities

¹ The exceptions are: Arkansas, Maryland, New York, and Virginia.

² The exceptions are: Arkansas, New York, Vermont, and West Virginia.

³ For a list, see the *Book of the States, 1941-1942, op. cit.*, p. 80.

⁴ Seven states based these agencies on executive order.

⁵ These include: Iowa, Kentucky, Maine, Nebraska, Ohio, and Texas.

⁶ As compiled by National Resources Planning Board. See *Book of the States, 1941-1942, op. cit.*, p. 212.

appropriations for planning departments, while only Connecticut, Pennsylvania, and Wisconsin saw fit to grant as much as \$50,000.¹ Considering the magnitude of the problems confronting the states as natural resources are depleted, it would seem that this type of work deserves more generous attention and support.

All of the states maintain legal departments which are headed by attorneys general. In forty-one cases² these officers receive their positions at the hands of the voters and consequently may not cooperate very closely with the other departments of state government. Much of the work of these departments relates to the courts and is dealt with in that connection,³ but in addition general legal services are performed for the administrative departments. Legal questions are constantly arising in connection with administrative activities—in some agencies so frequently that a special representative of the attorney-general's office is maintained on a full-time basis in those departments.

The administrative agencies of a state require various sorts of supplies. Some of these may be needed only by a single agency and in small quantities; others may be used by every department and in large quantities. At one time it was the common practice to permit each department to purchase its own supplies from whatever source it desired, but this policy proved unsatisfactory. Decentralized purchasing made it impossible to secure low prices that usually accompany quantity purchasing; moreover, it encouraged buying from political favorites who often expected the state to pay a high price for inferior products. All of the states, with the exception of Delaware, Mississippi, Nevada, New Mexico, and South Carolina, made provisions for central purchasing agents or bureaus in 1941, though in some instances these were not given authority over all departments.⁴ The approved practice is to purchase all supplies which are needed in quantity through a central agency, on the basis of carefully drafted specifications, and as a result of competitive bidding. Small purchases are frequently left to the various agencies, since no savings are likely and indeed the cost of central purchasing may actually be greater because of the orders, delivery

¹ See the *Book of the States, 1941-1942, op. cit.*, p. 211.

² The exceptions are: Indiana, Maine, New Hampshire, New Jersey, Pennsylvania, Tennessee, and Wyoming.

³ See Chap. 41.

⁴ For example, Florida uses this system only when purchasing supplies for institutions.

charges, and so forth, incident to central purchasing. Central purchasing agencies have to do the best they can despite the vigorous attempts of politicians to profit from their favored position. In many states they are also hampered by legislation forbidding out-of-state buying if local prices are within 10 per cent or so of the prices quoted, which pressure groups have succeeded in getting passed. The federal and state legislation which permits manufacturers to set prices which cannot be cut and which authorizes commissions to fix the price of coal has also hindered the accomplishments of state purchasing agencies. Nevertheless, the advantages of honest central purchasing of supplies used in quantities are above debate.¹

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CHAPTER XLIII

STATE FINANCIAL ADMINISTRATION

THE record of the forty-eight states is far from uniform on the score of general financial soundness. During the past decade some of them have found it very difficult to meet current expenses and consequently have sought eagerly for new sources of income; others have been so fortunate as to have substantial balances in their treasuries after paying all bills. The bonded indebtedness of some of the states is high enough to occasion considerable concern to those who bother themselves about such matters. At the other extreme there are a few states which for one reason or another have very small indebtedness and find it comparatively easy to meet interest and principal payments. In general, states have recently found their financial problems rather serious, though they have been assisted very materially by the Federal government in meeting charges that otherwise might have severely taxed their resources. The search for new sources of revenue has been carried on more or less assiduously by all of the states, though not all of them have been equally successful in discovering springs that produced abundantly. If one compares the increase in state expenditures or indebtedness during the past decade or so with corresponding items in the national government, it may seem that the states are quite fortunate inasmuch as there has been less of the spectacular soaring to be noted in the case of the latter. However, it should be borne in mind that the states have nothing like the credit or resources which are at the command of the national government. Thus an indebtedness of something like \$3,000,000,000¹ on the part of the forty-eight states may appear almost insignificant in these days when the national debt soars all too rapidly, but it is actually a relatively heavy burden.²

¹ The gross debts of the states amounted to \$3,526,407,000 in 1940. This compares with \$2,895,845,000 in 1932. However, in 1922 the total was only \$1,162,651,000. See *The Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, p. 140.

² For additional discussions of this general problem, see the standard texts in public finance by H. L. Lutz, M. H. Hunter, C. L. King, C. C. Plehn, M. C. Mills, J. P. Jensen, G. W. Starr, and A. G. Buehler.

SOURCES OF STATE REVENUES

Not many years ago it was taken for granted that the main source of state revenue would always be the general property tax, for that

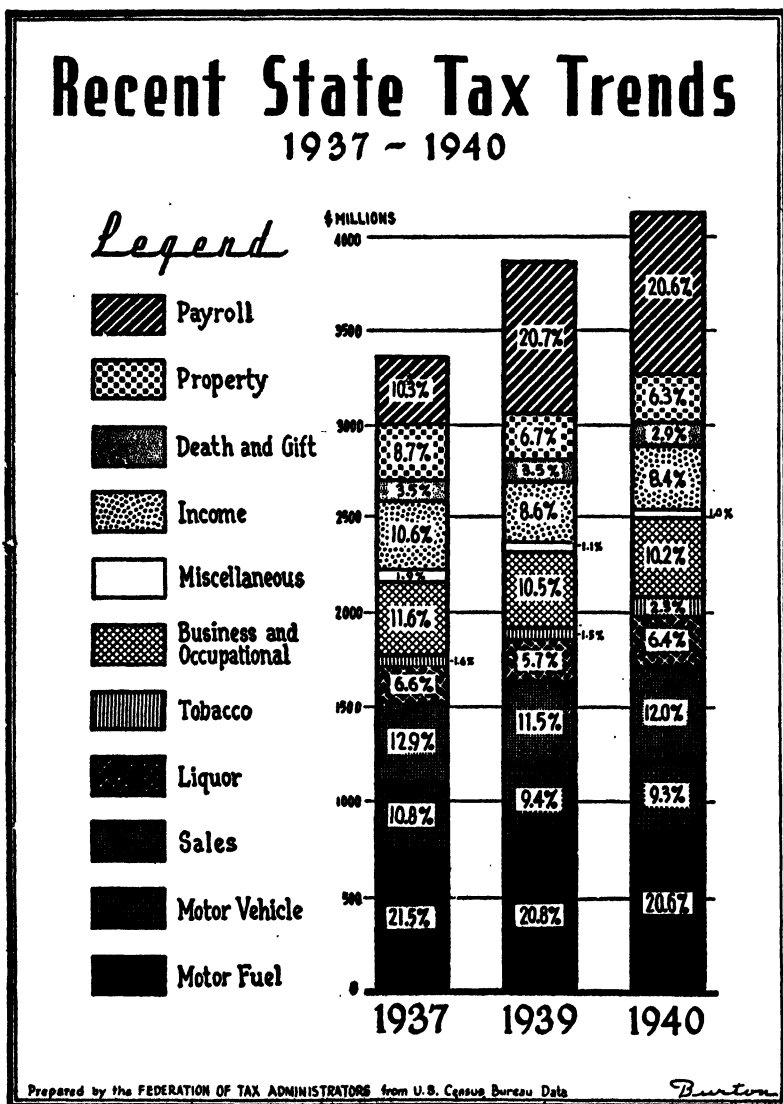


FIG. 16

had been depended upon for many decades as an old stand-by. The general property tax is still an important source of revenue in many of the states, but it has more and more been supplanted by other

revenue producers, until in several of the states it is now reserved entirely to the local governments.¹ The list of sources to which the states now look for their income is both long and varied. In addition to the general property tax, there are income taxes of both the net and gross variety, sales taxes of many kinds, inheritance taxes, corporation taxes, intangibles taxes, franchise taxes, capital stock taxes, and poll taxes. These are supplemented by an array of license fees which must be paid by automobile owners, automobile drivers, operators of hotels and restaurants, venders of spiritous liquors, merchants, and others. Grants-in-aid from the federal Treasury, which were insignificant as a source of state income prior to 1933, have increased until they account for approximately one-sixth of the receipts of the several states. Finally, there are numerous miscellaneous items which are not to be ignored, though they individually seldom produce very large amounts; among these may be mentioned: fines, profit on the sale of liquor at state dispensaries,² tuition from state schools, earnings of prisons and other state institutions, sale of state land, and royalties from oil wells on state property. Total state revenues currently exceed \$4,000,000,000 per year—in 1941 some \$4,451,000,000 came in.

Before the demands on state governments became so heavy, it was the general practice to list all of the real and personal property in a state and to apportion the cost of running the state govern- **General Property Tax** ment among the owners of this property according to the amount which they held. But as the cost of state government increased and the counties, cities, and towns found it necessary to draw more and more heavily upon this source, the total tax rate reached a point where owners of property first protested vigorously and then took steps to safeguard their interests. Inasmuch as the local governments were not in a position to shift their collections to other sources, it fell to the lot of the states to look about for other types of revenue. A few of the states have abandoned the general property tax entirely in favor of their subdivisions, but most of them supplement it with an array of other taxes, licenses, and fees. If one omits the grants-in-aid paid out of the national Treasury to states and considers only those amounts collected by the states themselves from various sources, the general property tax now accounts for only about

¹ Illinois and New York, for example, do not depend upon this tax at present.

² Sixteen states which sell liquor reported total income of \$262,449,000 in 1938. Profits which were turned over to the general fund amounted to \$52,965,000. See *Book of the States, 1941-1942, op. cit.*, p. 126.

6 per cent of the total receipts.¹ Some five other types of income exclusive of payments from the federal Treasury are now more important than the time-honored general property tax in point of total amounts involved.²

Inasmuch as the general property tax is collected on land, buildings, and personal property of both the tangible and intangible varieties, one of the first steps which has to be taken is the listing of all such property along with estimates of the value thereof. **Assessment** State tax commissions often perform this task in connection with the holdings of railroads and other large corporations which own large amounts of property scattered over a state and which by its very nature presents many difficult problems. However, the general work of assessing is entrusted to the counties, the townships, or the cities, depending upon the state and the state then proceeds to use these assessments as a basis for levying its taxes. The valuation of land and buildings is made annually by slightly more than half of the states and every two or four years in most of the remainder, though there are cases of five-year, six-year, ten-year, and indefinite assessment.³ The national association which includes the various kinds of assessors recommends that assessment be divorced from any regulations having to do with frequency on the ground that it should be a continuous process entrusted to professionally trained persons.⁴ Assessments ought to represent the current value of property⁵ and hence in a neighborhood where there is frequent change assessment may be desirable every year, whereas in those sections where values are stable an assessment every five or even ten years might be sufficient.

Unfortunately many assessing officials are part-time employees of the local governments who have had little or no training for their jobs, while even the head assessors are often political rather than profes-

¹ Out of a total revenue of \$4,451,000,000 in 1941 all property taxes produced only \$254,000,000. See Bureau of the Census, *State Tax Collections: 1941*, Government Printing Office, Washington, p. 9.

² These are: sales taxes, unemployment compensation taxes, taxes on specific businesses, net income taxes, and motor-vehicle licenses.

³ Connecticut provides for decennial assessment; Ohio uses the six-year period; and Maryland specifies assessment at five-year intervals.

⁴ See *Assessing Principles*, rev. ed., National Association of Assessing Officers, Chicago, 1939.

⁵ Some corporation attorneys oppose current-value assessments on the ground that the older cities would face bankruptcy if they reduced assessments on much of their downtown property to anything like actual value. This view was expressed by several of those participating in the panel discussion on assessment held in connection with the American Bar Association meeting in Indianapolis in October, 1941.

sional in character. Considering the difficulty of ascertaining the value of a piece of land or a building, to say nothing of art objects, jewelry, and corporate stocks, it is perhaps surprising that assessing is done as well as it is. There are architects' tables available that are useful in arriving at the construction cost and depreciation rate of buildings; the keeping of land-value maps based on the actual prices currently being paid for land assists in avoiding mere guesswork in assessing land. However, it is the exceptional assessor who makes use of these devices. The result is that assessments vary markedly within a city or county, with attendant unfairness to the property owner as well as weakness in the tax structure. What is more serious perhaps to the state which depends upon these local assessments is that there is often considerable variation from one county to another. A study of Pennsylvania assessments several years ago revealed that the median ratio of assessed values to sales values fell below 50 per cent in three counties, while in Philadelphia it stood at 110.2.¹ When the situation becomes sufficiently bad, the state tax commission may order reassessment in certain local areas and attempt to review assessments throughout the state in such a way as to bring about equalization.

Assessment Difficulties

When the proper state authorities have determined what amount has to be raised by general property taxes, they compute the tax rate by dividing this amount by the total assessed valuation of all real and personal property in the state. The tax rate is then expressed in terms of so many mills, so many cents, or so many dollars; thus it is said that the current tax rate is .15 cents on the dollar of assessed valuation or 15 cents per \$100 or \$1.50 per \$1,000. In a number of states the maximum tax rate is fixed by statute or constitutional provision; consequently the current tax rate is usually whatever is stipulated.

Fixing the Tax Rate

It is relatively easy for even untrained persons to locate land and buildings, though they may place fantastic values on what they find, but personal property presents more serious difficulties. Automobiles are apparent enough if they are located where the assessor is; however, they are, of course, movable. Jewelry occupies little space and is ordinarily not kept in such a place that it will be seen by the assessor; even if

Difficulties in Connection with Personal Tangible Property

¹ See E. B. Logan, *Taxation of Real Property in Pennsylvania*, State Printer, Harrisburg, 1934, table 1.

inquiry is made, people are reluctant to report the ownership of jewelry because it does not bring in any income and seems to them quite different from land and buildings which have definite utility. The result is that populous states as far as the tax records can be depended upon to tell the story contain only a few hundred watches and possibly not even that many diamonds. It has been argued that the cost of assessing personal tangible property is so high in comparison with the amount of income produced in taxes that a state would do well to exempt personal effects below, say, \$500 in value.¹

The problem of intangible personal property is even more perplexing than that of tangible personalty. A certain amount of jewelry is displayed on the persons of their owners, while clothing, furniture, cows and horses, and farming implements are usually not easily concealed. But who ever heard of a man wearing stocks and bonds, notes, or bank-deposit books? Nor are these evidences of property, which may amount to tens of thousands of dollars, ordinarily left around on mantels or dining-room tables. The assessor is largely dependent upon the honesty of the owner to report his intangibles and the weight of an ordinary general property tax is so heavy on this type of property that honesty is severely strained. Many bonds and some stocks do not earn more than 2 or 3 per cent per year; yet the over-all tax rate in most localities is more than that. Shall the owner of intangibles be honest and incur taxes which will more than eat up all of his income from these securities or shall he forget to mention his holdings to the tax assessor? Obviously very few citizens will follow the former course and hence the amount of intangible personal property shown on tax lists is often shockingly low. Some states, recognizing the premium put upon dishonesty and appreciating the higher returns to be derived from a lower rate on intangibles, have taxed this type of property at a much lower rate than general property. Farmers sometimes resent this discrimination which they view as favoritism, but it has been demonstrated again and again that a tax of 25 cents per \$100 value in the case of stocks and bonds will actually produce many times as much revenue as the ordinary general property tax of say \$2.50 or \$3.00.

As tax rates have approached a point where owners of property have found them very burdensome and in certain cases almost confiscatory, there have been tax strikes, widespread tax delinquency,

¹ Some states do follow this practice.

foreclosures, and other manifestations of trouble. The tax strike in Cook County, Illinois, several years ago produced financial consequences of the greatest magnitude, leading to complications that required several years to iron out. During the depth of the depression more than half of all real property was delinquent in several of the states that were the worst hit. One of the results of this situation has been a movement in the direction of placing maximum limits on the total tax rate to be imposed by states and by states and all local governments. Approximately half of the states have established limits for the state share of the general property tax, ranging from less than \$1.00 per \$1,000 assessed valuation to Colorado whose constitution fixes the rather meaningless maximum of \$50 per \$1,000 assessed valuation.¹ Delaware, Michigan, New York, Illinois, North Carolina, Oklahoma, Pennsylvania, and Virginia have ceased levying state general property taxes at all. A number of states have stipulated that the over-all tax levied by the state and the local governments therein shall not exceed \$15 or so per \$1,000 of assessed valuation, adding, however, that in case of emergency or to meet social security expenses an additional levy shall be permitted. In almost every instance the over-all maximum has been fixed so low that it has been impossible to operate the governments at anything like a satisfactory level on the revenues available; consequently actual tax levies are frequently double what the law purports to permit. If the success of the tax-limitation laws is to be judged by the adherence to them, they have usually failed. However, it is probable that these laws have kept the tax rate at a somewhat lower level than would otherwise have been the case.

One of the earlier new sources of revenue discovered by the states was the tax imposed on the incomes of individuals and corporations. State after state has joined the procession, until thirty-two states now have corporation-income taxes, an equal number have personal-income taxes, and only fourteen of the states have neither.² Income taxes as defined by the United States Census Bureau are of the net type, permitting those affected to deduct the expenses of doing business and certain other specified items from their gross in-

**Attempts
to Limit
General
Property-
tax Rates**

**Income
Taxes**

¹ For a table showing the tax limits imposed in the various states, see W. Brooke Graves, *American State Government*, rev. ed., D. C. Heath and Company, Boston, 1941, p. 407.

² These statistics are based upon the reports of the United States Bureau of the Census for the year 1938. It may be added that there is a delay of several years before statistics are available on state finances.

comes before computing taxes. In addition to this traditional type of income tax, there is what is known as the "gross" income tax which is based upon all income. The net income tax has been the more popular and at present takes in something like 70 per cent of the

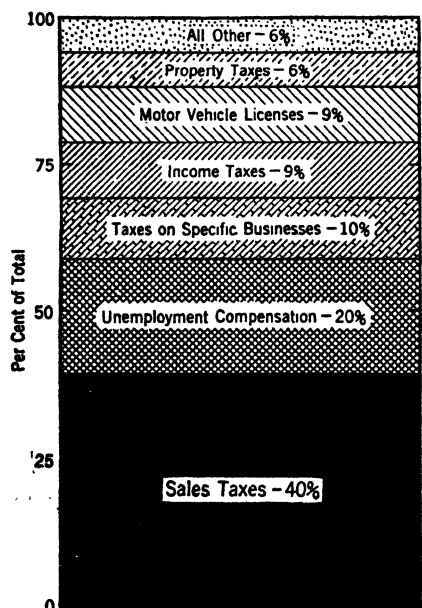


FIG. 17. Sources of state tax collections in 1941. Adapted from a chart prepared by the State and Local Government Division of the Bureau of the Census.

entire population of the United States. Individuals have recently contributed approximately \$200,000,000 each year in this form of tax, while corporations have paid in approximately \$150,000,000.¹ Thus income taxes account for about 9 per cent of state tax collections, or about one and one-half times as much as the traditional general property tax. The gross income tax has been both praised and criticized. It has two great advantages: (1) it is an excellent producer of revenue and (2) it is easy to collect because there are no loopholes which permit shrewd lawyers to save their clients large sums. Critics maintain that the gross income tax is not fair in that it

falls particularly heavily on small business men and others who have little margin of profit. In both types of income tax it is common to make some exemption, ordinarily from \$1,000 to \$2,500.

Every state except Nevada provides for a tax upon the estates of wealthy persons and upon inheritances which are sizable. The majority of the states graduate the amount of the tax, basing the rate upon the size of the estate. Small estates of a few thousand dollars are usually exempt entirely from these taxes. The nearness of relationship to the deceased has a good deal to do with the exemption and rate in the case of inheritances.

¹ It is difficult to determine the exact amount produced by individual income taxes because several states do not break their income-tax receipts down into corporation and individual categories. The Division of State and Local Government of the United States Bureau of the Census reported receipts of \$208,000,000 from individual incomes and \$157,000,000 from corporations in 1941.

Inheritance and Estate Taxes

Thus thirty-seven states studied a few years ago granted an average exemption of \$16,310 to widows, \$10,600 to widowers, \$8,120 to children, \$2,850 to brothers and sisters, \$510 to uncles and aunts, and \$290 to those not relatives. The rates imposed upon that part of inheritances taxed varied from $1\frac{1}{4}$ per cent to $6\frac{1}{2}$ per cent in the case of widows and from 6 per cent to $16\frac{1}{4}$ per cent in the case of nonrelatives.¹ These taxes have produced approximately \$120,000,000 per year in the forty-seven states that collect them, with New York and Pennsylvania accounting for something like 40 per cent of the total.²

The most profitable single category of state income is labeled "sales taxes" by the Bureau of the Census. These have recently brought in almost one-third of all state revenues and if federal grants-in-aid and other nontaxes are excluded about 40 per cent. Sales
Taxes

The most important sales tax levied by the states—and every state uses such a tax—is that on motor fuel, the greater part of which is derived from gasoline. In 1941 the states collected about one-fifth of their tax receipts from motor fuel alone; more than \$900,000,000 has been derived from this source in a single year.³ The original argument for this tax stressed the improvement of highways, but the rate has been increased through the years until very large amounts are now diverted for general governmental purposes, despite the criticism of the automobile associations which maintain that it is unfair to take more than is necessary for road repairs and improvements. The desperate need for additional funds in the early 1930's led a number of the states to enact laws imposing general sales taxes; some of these included food while others attempted to exempt the necessities. Approximately half of the states now make use of the general sales-and-use tax, imposing taxes which run from 1 to 3 per cent.⁴ The total income from the general sales tax exceeds \$500,000,000 per year,⁵ which represents about one-eighth of total state receipts. California, Illinois, Michigan, and Ohio depend especially on the general sales tax and in 1941 accounted for something like half of the amounts collected by all the states from

¹ See A. S. King and M. M. Davisson, "Inheritance Taxation," bulletin of Bureau of Public Administration, University of California, 1934.

² The exact amount produced in 1941 was \$122,000,000.

³ In 1941 the revenue from this source was \$910,000,000. It is probable that the war necessities will reduce this amount more or less drastically—at least the state authorities were distinctly fearful in 1942.

⁴ In 1938 twenty-six states did not use the general sales tax while twenty-two did. See report of United States Bureau of the Census.

⁵ In 1941 the general sales tax produced \$552,000,000.

such a source. Alcoholic-beverages taxes bring into the forty-eight states—and they all have at least some revenue from these—more than \$200,000,000 per year,¹ while tobacco taxes produce more than \$100,000,000 annually.²

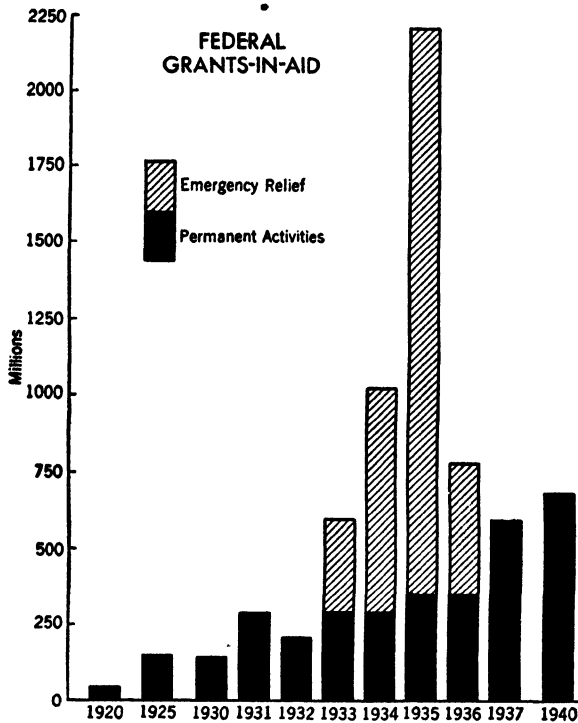


FIG. 78. A chart showing state revenues from Federal grants-in-aid, 1920-1940. Adapted from a chart prepared by the Federation of Tax Administrators.

Motor vehicle taxes are an important producer of state revenue, though far less productive than the tax on gasoline; more than \$400,-000,000 has been realized in one year from this source.³ Licenses on businesses of various kinds bring in more than \$400,000,000.⁴ Unemployment compensation taxes on pay rolls account for some \$900,000,000 per year—a handsome sum, but this does not go for running the ordinary services of a state government.⁵

¹ In 1941 the amount was \$215,000,000.

² In 1941 the exact amount was \$103,000,000.

³ In 1941 the exact amount was \$416,000,000. The war may well have a distinctly depressing effect on this tax, since new automobiles are not available, old ones are wearing out, and lack of tires may force the storage of others.

⁴ In 1941 the exact amount was \$452,000,000.

⁵ In 1941 the exact amount was \$881,000,000.

Prior to 1933 the amounts which states received from the Federal government in grants-in-aid were comparatively small, but the years since that time have seen new projects added or increases made in existing projects—usually both—until this source is now a major one for every one of the forty-eight states. Federal Grants-in-aid

Altogether states receive something like one-sixth of all their income from federal grants-in-aid, which total approximately \$750,000,000 annually.¹ Certain states fare much better than others proportionately: for example, Mississippi in 1938 received \$12,872,000, or about 30 per cent, out of a grand total of revenue amounting to \$43,125,000 from federal grants-in-aid, whereas Delaware was given only \$1,831,000 out of \$15,161,000, or not a great deal more than 10 per cent, from this source.² In 1940 the grants made to the states under several different programs were as follows:³

Agricultural Experiment Stations	\$6,488,149
Agricultural Extension Work	18,458,267
Forest Funds	3,293,794
State Marine Schools	100,000
Homes for Disabled Soldiers and Sailors	987,767
National Guard	71,019,749
Land-grant Colleges	5,030,000
Vocational Education and Rehabilitation	21,472,802
Wild-life Restoration	471,579
U. S. Employment Offices	61,679,983
Payments under the Social Security Act	348,484,846
Public Roads and Highways	120,170,134

In addition to the major sources of state revenue which have been mentioned above there are many minor sources which may be resorted to only by one or two states. Some of these have been grouped together under special assessments and special charges in the census breakdown; others are bulked under charges for current services, contributions from public-service enterprises, and "all other." The special assessments and special charges account for only about \$1,000,000 and appear in only nine states.⁴ Charges for various services are levied in all of the states and bring in almost \$200,000,000 annually,⁵ while contributions from public-service enter-

¹ In 1941 the exact amount was \$682,559,000.

² See *Book of the States, 1941-1942, op. cit.*, pp. 124-125.

³ See *ibid.*, pp. 148-149.

⁴ The exact amount in 1939 was \$877,000.

⁵ The exact amount was \$189,928,000 in 1939.

prises amount to slightly over \$50,000,000 ¹ and benefit only nineteen of the states, Pennsylvania and Michigan collecting about half of the total. "All other" sources bring in about \$40,000,000 per year ² and involve a great array of items.

EXPENDITURES

The demands made upon the several state governments have long been heavy, but the problems brought on by the economic depression following 1929 added a substantial load which at times seemed almost too heavy to be borne. The social security program of the national government has involved large grants-in-aid to the states; yet it has also necessitated the local contribution of matching sums. Some of this burden has been passed on to the counties, cities, and towns, but the state treasury has had to bear a considerable part of the cost. Thus despite the success in searching out new sources of revenue which raised the per capita receipts from \$17.27 in 1932 to \$36.54 in 1939—a more than 100 per cent increase—most of the states have been continually beset by the problem of how to make ends meet. Even as wealthy a state as Pennsylvania found in 1939, according to Professor Young, that it had more than \$50,000,000 in outstanding bills and commitments "for which there was no adequate revenue." ³ The total expenditures of the forty-eight states now considerably exceed \$4,000,000,000 per year; the rise during the immediate past is indicated by the fact that the per capita cost of the operation and interest payments of the various states mounted from \$13.40 in 1932 to \$28.48 in 1939. ⁴

All of the states at present operate under nominal budget systems, although there is wide variation in the effectiveness of the different **Budgetary Systems** setups. Some of the states have paid a great deal of attention to their budgetary practices, setting up special departments of the state government to give their full-time attention to the preparation and carrying out of budget provisions and bringing in outside experts to advise as to the most modern procedures. At the other extreme are some states which do little more than go through the

¹ The exact amount was \$51,688,000 in 1939.

² The exact amount was \$43,162,000 in 1939.

³ J. T. Young, *The New American Government and Its Work*, rev. ed., The Macmillan Company, New York, 1940, p. 805.

⁴ See *Financial Statistics of States: 1939*, Government Printing Office, Washington, 1942, p. 8.

forms of budget-making and completely ignore the problems incident to seeing that the terms of the budget are carried out. These states may be said to have "paper budgets," since for most practical purposes they do not operate under a carefully prepared financial plan. The general outlines of state budgetary systems follow those which have already been examined in the national government,¹ but there are certain differences which should be noted. In the first place, some observers are of the opinion that the superior state systems are better examples of budgetary practice than the national system because there is not the great gap between expenditures and income that is so striking a feature of the federal system. If the definition which one accepts requires the outgo and income to balance, then it is fair to say that the states are in a preferred position; however, if the narrow definition is scrapped in favor of a more modern one which emphasizes care in drafting and execution then the advantage of the states disappears, since few, if any, of the states have as effective budgetary machinery as the national government.

A second distinction which possesses greater validity involves the agency entrusted with the preparation of a budget. In the national government a Bureau of the Budget which is a part of the executive office of the President performs that service, whereas in the states there is no uniform arrangement.

**Budget-
making in
the States**

Arkansas clings to the custom of entrusting the preparation of a budget to the budget committee of the legislature and is the sole example at present of a state which uses the older legislative type of budget. Nine of the states² maintain commissions of one kind and another, which usually draw their membership both from the administrative departments and the legislature; the governor may have an important role in connection with these commissions but he shares his authority. Four states make the governor directly responsible for preparing a budget,³ while three states name the comptroller as the budget officer.⁴ In the remainder of the states there are budget directors, budget bureaus, budget commissioners, and other special provisions made for this financial planning and these are subject to the supervision of the governor in most instances. Hence it may be seen

¹ See Chap. 26.

² Connecticut, Delaware, Florida, Indiana, Louisiana, Montana, North Dakota, South Carolina, Texas.

³ Arizona, Nevada, New Mexico, Wyoming.

⁴ Alabama, Iowa, New Hampshire.

that the legislative budget has almost disappeared from the scene, that the commission type is still fairly common, but that the distinct trend is in the direction of the executive type of budget.

The procedure which was outlined in connection with the drafting and execution of a national budget ¹ is followed by the states in general and does not require repetition here. However, there are several details that may be mentioned as especially related to the states. The dates upon which the estimates are required frequently coincide with the early fall date specified by the national Bureau of the Budget, but there are exceptions. Arkansas delays until just before the beginning of a legislative session, which does not, of course, permit sufficient time to examine the estimates with reasonable care; Texas stipulates January 1 preceding the beginning of a new fiscal year on September 1. Ohio sets November 1, despite the fact that the new fiscal year starts on January 1, while West Virginia goes back to July 1. Three states, Maryland, Minnesota, and Mississippi, set no date. Instead of presenting the budget to the legislative body within a few days of its convening, a number of states, including Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Nevada, Pennsylvania, and Utah, permit twenty days or even longer after the session begins. Perhaps the most significant difference between the national budgetary procedure and that of the states is to be found in Maryland, Nevada, New York, and West Virginia, where the legislature may strike out or reduce any item in the proposed budget, but does not have the authority to insert new items or to increase other amounts. This, together with the itemic veto which the governors usually have over financial measures, permits a central control of finance which the federal system does not render possible. However, with the exception of the four states listed above, state legislatures have the same unlimited power in connection with a budget that Congress possesses. Finally, it may be of some interest that the fiscal years of the various states are not always uniform; thirty-five states follow the federal practice and make July 1 the beginning of the new fiscal year; six states cling to January 1; and the other seven states use April 1, September 1, October 1, and December 1.²

Out of the total of somewhat more than \$4,000,000,000 which the

¹ See Chap. 26.

² See the *Book of the States, 1941-1942, op. cit.*, p. 112, for a table showing the current practices in the various states.

forty-eight states now expend annually, more than \$3,000,000,000 or about three-fourths, goes for operating the various departments and agencies of the state government.¹ When viewed from the standpoint of the individual, this represents approximately \$25 per capita which must be raised every year. In addition to the operation of state government, there are two other items which require substantial sums of money: capital outlays

A Break-down of State Expenditures

and interest. The states have certain expenses which must be met year after year and these are known as "operating costs"; there are other expenses which are not recurring and which involve the purchase of land, the construction of permanent buildings, and the improving of highways. These are designated expenditures for capital outlays.

Almost \$750,000,000² has recently been put into this type of program every year. Interest speaks for itself and represents, of course, the amounts which

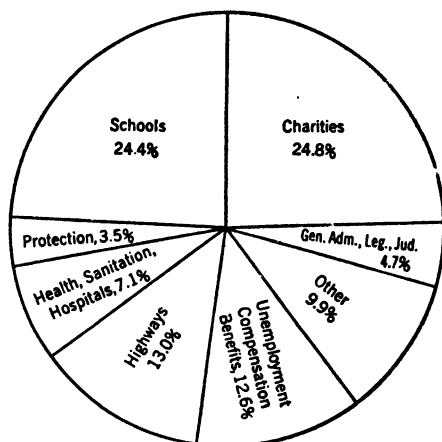


FIG. 19. Functional distribution of state expenditures for general government, 1939. Prepared by the State and Local Government Division of the Bureau of the Census.

are required to meet the interest charges on the state debt. Something over \$100,000,000 has to be paid out each year on this account.³

The fact that the cost of operating the departments of state government amounts to more than \$3,000,000,000 per year is more or less meaningless because it gives no indication of the specific purposes for which the money goes. Therefore, we shall now proceed to an examination of the various items which combine to make up what is designated the cost of operating state government. To begin with, one perhaps thinks of the legislature, the governor's office, and the elaborate system of courts; these are much in the limelight and perform important functions, but they are not responsible for any large portion of the three billion odd dollars which we are engaged in tearing apart. Even if there is added

Expenditures for Specific Purposes

¹ Operating costs amounted to \$3,578,669,000 in 1939.

² The exact amount spent for capital outlays in 1939 was \$759,212,000.

³ The exact amount in 1939 was \$117,423,000.

to these branches the general administrative departments, such as the secretary of state's office, the auditor's office, and the attorney-general's department, the aggregate cost runs only to about \$150,000,000 per year, or less than 5 per cent of the total.¹

For many years prior to 1939 the largest item among the operating costs was that labeled "schools." In 1939 this dropped to second place, though it still accounted for something like \$900,000,000,² **Education** or approximately one-fourth of the grand total. This includes the expenses of operating state universities, teacher-training institutions, state departments of education, and other varieties of educational activity directly undertaken by the states and also the sizable grants that are made to assist the local school authorities in meeting the costs of the elementary- and secondary-school systems. It may be added that less than one-fourth of the money which states pay out for educational purposes goes for the former and that by far the greater part is distributed among the local units of government within the states.

The term "charities" is tinged with an air of the Victorian era and is not ordinarily appreciated by professional social workers; indeed, the average John Citizen now is likely to speak of "social **Charities** security" rather than of charities. But the United States Bureau of the Census reports what was in 1939 the largest item of state operating expenditures under this heading.³ Approximately \$900,000,000, or substantially one-fourth of all operating costs, are paid out every year for various charitable purposes, the most important being old-age assistance, pensions for the blind, aid to dependent and crippled children, unemployment offices, and grants to those unable to purchase food, clothing, and shelter. Much of this work is carried on directly by the states or at least financed in large part by the states, while a great deal is entrusted to the local governments which then receive financial assistance. Grants to local governments exceed \$350,000,000 each year; other charitable costs run to more than \$500,000,000 annually.⁴

The third largest operating cost, if unemployment compensation

¹ The exact amount in 1939 was \$169,475,000.

² The amount directly spent by the states in 1939 was \$213,945,000; the grants to subdivisions totaled \$659,301,000.

³ Charities accounted for 24.8 per cent of general government payments in 1939; schools, 24.4 per cent.

⁴ The exact amounts were: \$367,768,000 and \$515,938,000 in 1939.

insurance is excluded, relates to the construction and maintenance of highways; more than \$500,000,000 per year,¹ or approximately 15 per cent of the grand total, goes for this purpose.² Considering that gasoline taxes have brought in more than \$900,000,-
 000 and automobile license fees more than \$400,000,000 per year, it may be seen that there is a considerable gap between what is spent for highways and what is taken from the motorist. States construct and maintain many miles of highways themselves, spending about \$250,-
 000,000 per year directly.³ The remaining \$200,000,000 is distributed among the counties, cities, and towns to assist them in improving and caring for the roads and streets for which they are expected to assume responsibility.⁴

Highways

Next in order of importance among the operating costs of state government is that category which takes in the hospitals and asylums for the insane, the epileptic, the feeble-minded, and other handicapped classes. The number of these cases has in-
 creased sharply during recent years, thus placing a heavy financial load upon the states which have to shoulder most of the burden. Approximately \$200,000,000,⁵ or almost 6 per cent of the aggregate of operating expenses, is devoted to this purpose annually.

Hospitals
and Institutions for
Handi-
capped

Although states have long maintained penitentiaries and other correctional institutions, they have only recently entered the field of protecting persons and property on a large scale, for this function was traditionally performed by the county and city police and fire departments. Organized crime has made the local officials more or less helpless and called for state police forces; the network of improved highways has brought about traffic problems which require central policing. More than \$125,000,-
 000⁶ is being spent annually by states for protecting persons and property, while the penitentiaries, reformatories, state farms, and training schools for delinquent youth require an additional sum more than half as large.⁷

Protection
to Persons
and Prop-
erty and
Corrections

¹ These required \$517,950,000 in 1939.

² With automobiles in less use and gasoline taxes less productive due to the war, it is probable that this amount will be reduced for the time-being.

³ The exact amount was \$275,710,000 in 1939.

⁴ The exact amount was \$188,581,000 in 1939.

⁵ The exact amount was \$203,652,000 in 1939.

⁶ The exact amount in 1939 was \$126,841,000.

⁷ The exact amount in 1939 was \$68,270,000.

Despite years of neglect, the states have at last become reasonably conscious of the importance of conserving their natural resources.

Development and Conservation of Natural Resources State forests are being developed; wild life is being protected; coal, oil, and other resources are being examined with a view to conserving what remains. Approximately \$100,000,000¹ is currently being expended by the states for this type of activity.

Health and Sanitation Another major interest of the several states involves the health of the inhabitants which in turn necessitates attention to proper sanitation. At present the states are spending more than \$40,000,000 each year on their own health projects and distributing about \$2,000,000 to assist the local governments to meet the demands made on them.²

In addition to the activities noted above, there are numerous minor items which occasion the expenditure of state funds. Recreation receives more than \$8,000,000 per year;³ state libraries draw almost \$3,000,000 annually.⁴ A multitude of activities are put in an omnibus class entitled "miscellaneous," which in a single year occasions the expenditure of more than \$500,000,000⁵ by the states themselves as well as a distribution of more than \$40,000,000⁶ among their various subdivisions. Contributions to public-service enterprises conclude the list, with about \$3,000,000 annually.⁷

INDEBTEDNESS

During the course of the years the states have incurred indebtedness for improving their highways, constructing public buildings, providing for current deficits, and numerous other purposes. Debt totals have risen, but nothing like so sharply as in the case of the national indebtedness—for example, the per capita net debt of all the states amounted to \$5.48 in 1880, \$2.78 in 1910, \$8.64 in 1922, \$16.35 in 1930, \$16.37 in 1932, \$18.90 in 1937, and \$19.28 in 1939. The total gross debt of the forty-eight states now exceeds \$3,000,000,000,⁸ but if there

¹ The exact amount in 1939 was \$100,091,000.

² In 1939 \$46,737,000 was spent directly and \$2,019,000 distributed among local governments.

³ The exact amount in 1939 was \$9,152,000.

⁴ The exact amount in 1939 was \$2,823,000.

⁵ In 1939 unemployment compensation benefits accounted for \$450,359,000 of this.

⁶ See *Financial Statistics of States: 1939*, p. 10.

⁷ In 1939 this amounted to \$3,293,000.

⁸ In 1939 it stood at \$3,449,020,000.

is subtracted from this the amounts which have been accumulated in sinking funds and other assets for the purpose of paying off the debt a total net debt of about \$2,500,000,000 results.¹

The debt totals noted above give a general picture of the situation, but they are not too enlightening so far as any one state is concerned because of the strikingly diverse record among the various states.² New York owes more than \$500,000,000,³ or approximately one-fifth of the amount admitted by all of the states together, while Connecticut, Florida, and North Dakota have no net indebtedness at all. Illinois is indebted to the extent of almost \$200,000,000;

Arkansas owes more than \$150,000,000; Louisiana is in debt just below the \$140,000,000 mark.⁴ At the other extreme are: Arizona, Delaware, Idaho, Nebraska, Nevada, South Dakota, Utah, Wisconsin, and Wyoming which have debts in each case of less than \$5,000,000, which is more or less nominal in these days.⁵

In certain cases state debts are made very difficult by state constitutions⁶ and this doubtless accounts to some extent for

the current situation; yet there are states that do not take advantage of the leeway which is permitted to them, preferring to finance their construction of roads⁷ and public buildings on a pay-as-you-go basis.

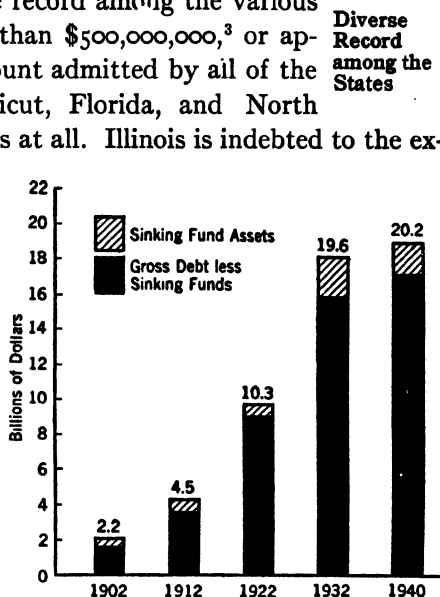


FIG. 20. State and local government debt, 1902-1940. Adapted from a chart prepared by the State and Local Government Division of the Bureau of the Census.

¹ In 1939 it stood at \$2,502,237,000.

² A table showing the gross and net debts of all the states will be found in the *Book of the States, 1941-1942, op. cit.*, p. 131.

³ New York had a net debt of \$541,988,000 in 1938.

⁴ The exact amounts in 1938 were: Illinois, \$186,820,000; Arkansas, \$159,883,000; and Louisiana, \$137,652,000.

⁵ The exact amounts as of 1938 are available in the *Book of the States, 1941-1942*, p. 131.

⁶ See Chap. 36 above; also C. C. Rohlfing and E. W. Carter, "Constitutional Limitations on State Indebtedness," *Annals of the American Academy of Political and Social Science*, Vol. CLXXXI, pp. 132-133, September, 1935; and the *Book of the States, 1941-1942, op. cit.*

⁷ About half of the state indebtedness has been for road improvements.

The common method of borrowing money was long that of issuing bonds which had a life of from ten to forty or more years. All of the bonds in a single issue fell due at one time and were retired by the use of sinking funds which the states built up during the years that the bonds were outstanding. Under this system annual contributions were supposed to be made to the sinking fund and in such amounts as would enable the state to pay off all of the bonds when they fell due. During the last century a number of states found that their sinking funds were not large enough to retire the bonds as they became due and consequently if they could not issue new bonds to raise the necessary money they sometimes defaulted and even repudiated their debts.¹ As recently as the last decade English holders of some of these state bonds, which were repudiated more than half a century ago, sought to have their government aid them in obtaining payment, but with no success. The trouble with sinking funds is that it is easy to delay adequate contributions during lean years; moreover, sinking funds have to be invested and the investments may prove worthless or the officials who handle the funds may turn out to be dishonest and embezzle sums entrusted to their care. The experience of the states with this type of borrowing has led some of them to substitute a newer type of bond.

Serial and annuity bonds are based on the principle that funds available for reducing the debt should be used at once for that purpose rather than held until an entire issue of bonds comes due. In other words, instead of having all of the bonds mature at one time, this type of borrowing practice scatters them out, so that some are payable every year until the entire amount is paid off. Various forms of these bonds provide that the date of maturity is specified on the face of the bond, that the maturity date is left uncertain when the bonds are issued with numbers drawn by lot every year to determine which bonds shall be paid, that a smaller number of bonds are paid off each year during the earlier years when interest charges are higher. It is not difficult to perceive that serial and annuity bonds avoid most of the weaknesses pointed out above in connection with sinking fund bonds.

¹ Twelve states during the years 1840 to 1883 repudiated bonds to the amount of \$77,650,000 and scaled down to the extent of \$83,137,500. For a table showing these states and the amounts in each case, see W. Brooke Graves, *American State Government*, D. C. Heath and Company, Boston, 1936, p. 452.

THE CARE OF STATE FUNDS

When state governments were relatively modest in their collections and expenditures, the problem of caring for public funds was not a very serious one. Nor was it necessary to take elaborate precautions lest large amounts of money be paid out to persons and companies not entitled to receive compensation from the state. But as states have added tax to tax and engaged themselves to pay out many millions of dollars every year for personal services and supplies, it has been increasingly essential that they have up-to-date accounting and auditing systems. Some of the states have paid a great deal of attention to these matters, abandoning outworn methods of bookkeeping for modern ones, installing accounting machines to do the work once performed laboriously by numerous clerks, and otherwise seeking to keep their finances in such an orderly condition that it would be apparent at any time exactly what debts were outstanding and what balances were available. Other states have been less alert in this particular, with the result that losses have occurred, records have been months behind, and no one could tell at any given moment what the exact condition of the treasury was.

In the horse-and-buggy days of state government a treasurer received the various moneys due a state. Inasmuch as the great portion of the income was derived from the general property tax which was collected by local governments, the state treasurer had very little to do in the way of actual collection beyond receiving amounts transmitted by the county and city treasurers. Now state revenue comes from a hundred different sources and the general property tax is not even used at all by some of the states; consequently the problems incident to collection have multiplied many times. To begin with, the treasurer has to collect taxes directly from large numbers of corporate and individual payers. Moreover, inasmuch as different moneys may have to be kept separate and devoted to specific purposes, for example public education and the payment for buildings and monuments, he has to set his accounting system upon the basis of a number of special funds. To add to the complications, various statutes authorize other state agencies to collect automobile-license taxes, gross income taxes, liquor-license fees, and a good many other taxes or fees due the state. The treasurer may have to collect from these other state departments, check their ac-

The Collection of State Funds

counts, and extend his own accounting setup to cover their receipts. More and more as the movement toward centralization increases, the treasurer is charged with general responsibility for the receiving of all state revenues.

After the money has been received, there is the problem of keeping it securely until it has to be paid out.¹ Few states have the facilities to

Custody of State Funds keep large sums of money in their own vaults and consequently the practice has been to deposit the funds in banks.

However, not all banks have been sound and therefore it has been necessary to decide which banks should receive public deposits and what security should be required to guarantee the safety of these funds. Not a great many years ago public treasurers gave state funds to their political favorites among the bankers, even though the attending risk might be serious. Matthew Stanley Quay as treasurer of Pennsylvania gave state funds to those banks which would loan him money without interest to speculate on the stock market; once he dispatched a famous telegram to a bank which read: "Buy 150 Met. and I will shake the plum tree," meaning that the bank was to purchase 150 shares of stock for him and he would furnish it additional deposits of state funds. It may be added that his speculations were disastrous, that the bank was left with large losses on its hands, and that the president of the bank shot himself. Public opinion finally became sufficiently aroused to cause statutes to be enacted which required banks to pay interest on public funds and to put up securities that would protect the state against loss. Recently the situation has been further complicated by the glut of bank deposits and the federal legislation prohibiting members of the Federal Reserve System from paying interest on demand deposits.

Although the treasurer collects and cares for state funds, he does not have the authority to pay out money unless he is instructed to do

Auditing so by the state auditor. Originally it was not thought necessary to check treasurers, but experience, of a bitter variety, demonstrated the desirability of having a separate state officer who would receive all claims against the state and certify those for payment which seemed to be well founded. Most of the states now have separate comptrollers or auditors, who except in six of the states are elected by the voters or at least not named by the governor, the theory

¹ On this subject, see M. L. Faust, *The Security of Public Deposits*, Public Administration Clearing House, Chicago, 1936.

being that the auditing authority should be independent of the executive. Some states, notably Georgia, Maryland, and Mississippi, not content with an auditor, go a step farther and permit the governor to check the auditor and treasurer by making examinations of their accounts at his pleasure and without previous warning.

There are two general types of audit which a responsible state will make provision for. First, there is the audit noted above which is preliminary to any payment of funds belonging to the state. **The Pre-audit** by the state treasurer. This consists of examining the claim to ascertain whether it has been incurred under some appropriation made by the legislature, since in the last analysis no money can be expended by a state until the legislature has made a current appropriation or passed a general law ordering certain payments periodically. At this stage the auditing authorities are also supposed to satisfy themselves that the personal service, supplies, or other items specified in the bill have actually been rendered or received by the state. It may be noted that in reality it is literally impossible for an accurate check to be made of all the bills which are pouring in on a present-day auditor. Milk is delivered daily to a dozen state institutions scattered over the state and in every case it is possible for the dairyman to give short measure or to furnish a product with less butterfat than the contract calls for; obviously the agents of the auditor cannot be at every one of these places and a thousand other places receiving supplies and personal services. Hence the auditor is obliged to depend upon the certification which he receives from the head of the institution or department which incurs the obligation, though he may occasionally send around an investigator without notice to take samples. How many persons there are on the state pay rolls who visit their offices only to receive their salaries and otherwise devote themselves to party work, it is difficult to say; evidence points to a considerable number in some of the states. Preauditing is not likely to catch this leak because the head of the department in which such a person is theoretically employed signs a pay roll which certifies that the work has been done.

Quite as important as the preaudit is a subsequent step which is known as the "postaudit." At intervals of a few months or a year it is highly desirable that the auditing department examine **Postaudit** the financial records of the various departments of the state which receive and spend money for the purpose of seeing that everything is in proper order. In this way irregularities may be uncovered

which if left unattended would cost the state thousands of dollars either because of someone's carelessness or dishonesty. An alert auditing department is constantly engaged in studying the financial system of a state with a view toward its improvement. Unless it can supply the budget authority with up-to-date and accurate figures relating to the financial condition of the state, it will be very difficult to make a satisfactory budget in the first place and almost impossible to supervise the carrying out of the provisions of the budget after it has been passed by the legislature.

STATE CONTROL OF LOCAL FINANCES

States are naturally interested in the financial practices of their political subdivisions, since in many cases their own obligations depend upon what goes on in the local governments. If a school district cannot pay the bonded indebtedness which it has extravagantly incurred, it is possible that it will not have the funds to pay ordinary operating expenses and hence will have to close the schools. This gives the state concern because educational standards are being threatened; besides no state likes to have the reputation of having subdivisions which default on their bonds. A scoundrel in the office of city treasurer may embezzle public funds to the extent of thousands of dollars unless some check is made and this too may cause loss to the state because some of the money involved belonged to the state share of general property-tax collections. Recognizing this problem, several states, including Indiana, North Carolina, Iowa, and Oklahoma, have seen fit to enact legislation which gives the state authorities a considerable measure of control over local finances.¹

One form of centralized control of local finances takes the form of periodic auditing. Agents of the auditor, state board of accounts, or
Auditing of Local Government Finances whatever state department is made responsible visit every official of counties, cities, townships, and other subdivisions who collects or disburses public funds. These inspections are required at least once each year in most cases and are not supposed to be announced beforehand. If irregularities are discovered, restitution must be made by the officer involved if it is a

¹ For discussion of the experience of specific states, see C. B. Masslich, "North Carolina's New Plan for Controlling Local Fiscal Affairs," *National Municipal Review*, Vol. XX, pp. 326ff., June, 1931; Carl Dortch, "The Indiana Plan in Action," *ibid.*, Vol. XXVIII, pp. 525ff., November, 1938; and Edwin E. Warner, "A Study of the Indiana Plan of Budgetary Review," *Legal Notes on Local Government*, Vol. IV, pp. 279ff., March, 1939.

matter of carelessness, but if embezzlement has taken place criminal charges are usually preferred. One middle western state has saved the public approximately \$7,000,000 over a period of some thirty years as a result of these examinations of local financial accounts. In this connection it is often the practice to require all local financial officers to install uniform systems of records and accounting.

A somewhat more drastic type of central control provides that local budgets and their accompanying tax rates shall be subject to central review. A small number of interested citizens may petition the state board of tax commissioners to review a specific item in a proposed budget which they regard as extravagant and unwarranted. If a maximum tax rate is stipulated by state law except in so far as emergencies require additional appropriations, the state authorities may be instructed by law to review all cases where the maximum rate is exceeded. Hearings are usually held in either of the above instances by representatives of the state and upon the basis of the arguments presented for and against the proposed item or excess in tax rate the proper state agency decides what shall be done. Deficiency appropriations not anticipated by the budget may also have to be submitted by the local authorities to the state department; transfers from one fund to another may also involve similar action.

**Review of
the Tax
Rate**

There is considerable difference of opinion as to the desirability of controlling local expenditures to the extent which some of the states now go. Proponents point to the waste which is obviated—one state has slashed more than \$30,000,000 from local budgets in approximately twenty years. Those who oppose the control maintain that it violates a cardinal principle of home rule, that it encourages irresponsibility on the part of local authorities, and that it is usually handled by state officials who have very little understanding of local problems. The critics add that the savings are negligible in comparison with the damage done and the improvements prevented.

Finally, central control of local finances sometimes extends to a review of proposals to issue bonds. Even if a local government has not incurred indebtedness to the extent permitted by law and even if the project involved is one authorized by law, state review may be invoked by interested citizens on the ground that such borrowing is unnecessary, constitutes an extravagance, or is untimely. Representatives of the appropriate state department preside over hearings at which both sides are heard; final

**Review of
Proposals
to Issue
Bonds**

decision as to whether the bonds can be issued is reserved to the central agency, which as a rule follows the recommendations of its examiners. Certain states have vetoed proposals running into the tens of millions of dollars over a period of years. Whether the school houses, city halls, basketball gymnasiums, roads, and other improvements involved in these vetoes should have been built to meet local needs, despite the expense, is a matter of violent difference of opinion. Sport fans who want to give every encouragement to the local basketball team are incensed when cautious citizens put taxes above a fine new building for holding basketball games and tournaments. Patrons of schools who resent antiquated school buildings accuse their neighbors of being penny wise but pound foolish because they oppose a bond issue to finance a modern school plant, claiming that the few dollars saved will be at the expense of the eyesight, health, and future usefulness of the children of the community.

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CHAPTER XLIV

SPECIFIC ADMINISTRATIVE SERVICES

ALTHOUGH a great deal of effort and money are required to collect revenues, keep records, maintain a personnel system, provide legal advice, and handle other staff functions, the chief emphasis of state government is naturally on the services which are rendered the people. Many of these are undertaken directly by the states, while others are shared with the counties and cities under a system of state aid. But in any case the importance of these services to the individual as well as to society is great. They relate to almost every aspect of human endeavor and interest and are so fundamental that many of them are literally taken for granted.

EDUCATION

From the standpoint of money expended as well as general significance the educational activities of the forty-eight states have for many years stood at the top of the list. Some states have taken this responsibility more seriously than others, perhaps because of recognition of the importance of these facilities or again because they have had the financial resources that make elaborate programs possible. Consequently the standards in some states are relatively superior: physical equipment is excellent, teachers are reasonably well trained, the curriculum is carefully planned, and the length of the school year is such that sufficient time is available for good work. In contrast, several states make a relatively poor showing, with quite inadequate buildings and equipment, teachers who have had comparatively little preparation, and school terms that cover only seven months or so. It is this marked variation which has persuaded many thoughtful people that the national government should embark on an ambitious grant-in-aid program in the field of education.

Though the states carry on some educational programs which directly involve the people, most of the actual operation of public schools is left to the cities, school districts, townships, counties, and other local governments. Nevertheless, the states ordinarily take a hand in the conduct of elementary

State and
Local Re-
lations

and secondary schools by setting up certain standards which have to be met and by making grants of money to assist the local authorities.

Every one of the forty-eight states maintains an administrative agency in the field of education. Forty-three have departments of education, while five prefer to use boards of education; this distinction is perhaps less important than it might seem on its face since even where there are departments of education boards are often set up for advisory purposes. Inasmuch as the board members are usually drawn from schools and universities or are ex officio in character, it is necessary to employ a full-time official to direct the work. These officers are usually given the title of State Superintendent of Public Instruction or Commissioner of Education and receive their positions through popular election or through appointment. They are assisted by more or less ample staffs which include professional educationists and clerical workers. Subdivisions of the general department are frequently created to handle elementary schools, secondary schools, colleges and universities, teacher training, licensing of teachers, curriculum building, vocational training, and pupil health.

State Educational
Departments

All of the states, except Louisiana, North Carolina, and Virginia, now have regulations which compel youths up to sixteen years of age to attend school unless excused for reasons of physical incapacity, mental inadequacy, and a very few other causes.¹ Thirty-seven of the states maintain equalization funds which are employed to assist the poorer sections in raising their standards to such a point that the entire educational system of the state may be reasonably satisfactory.² Thirty states are active in sponsoring or carrying on directly adult programs of education.³ A number of the states dedicate the revenues from certain state taxes, including liquor licenses, income taxes, sales taxes, and corporation taxes, either entirely or in part to the support of the public schools. In such cases financial assistance is given to every local school system which meets standards specified by state departments, irrespective of financial necessity. This type of aid differs from that mentioned in connection with equalization funds in that it goes to virtually all schools rather than only to those which might otherwise be unable to

General Educational
Activities

¹ *Book of the States, 1941-1942*, Council of States Governments and American Legislators' Associations, Chicago, 1941, p. 227.

² See the *Book of the States, 1941-1942*, *op. cit.*, p. 227.

³ *Ibid.*, pp. 353-354.

keep open. Twenty-three states ¹ specify minimum salaries to be paid to teachers, even paying several hundred dollars per year out of the state treasury toward the salary of every teacher in approved schools. One middle-western state uses a large part of the proceeds of its gross income tax to pay \$700 toward the salary of every teacher in approved school systems.

One of the most important activities of state departments of education has to do with the licensing of teachers. Twenty-nine ² of the **Licensing of Teachers** states at present stipulate that all public-school teachers must have at least two years of educational training beyond high school; the most progressive states have already reached or are rapidly approaching the point where graduation from a four-year college is required even for elementary-school licenses. Before a teacher can be given employment it is necessary for a license to be secured from the state department of education. Various grades of these are given: primary, secondary, vocational, life, five-year, and temporary. In addition to a minimum preparation beyond high school, it is now customary to require candidates for licenses to offer courses in education, practice teaching, and psychology as well as a minimum number of hours in the subjects which they expect to teach. Six of the states go so far as to protect teachers against dismissal after they have given satisfactory service for a specified period through the medium of permanent tenure laws.

State departments of education invariably carry on studies which it is hoped will be valuable in promoting educational standards. They **Other Activities** are organized to offer advice and to furnish printed material on educational problems. If the state has requirements in regard to length of school term, physical equipment, library facilities, and attendance it is probable that the state department will be expected to inspect the local schools to see that the standards are met. If there is a state equalization fund or if general grants are made for educational purposes, the state department is in a position to compel compliance upon the part of local school authorities; otherwise it may be difficult to bring about the enforcement of the state regulations. Schools may be refused a place on an accredited list, but local school authorities can hardly be jailed for failure to maintain state standards. In the more centralized states the departments of education have far-reaching powers in setting up the curriculum and specifying the texts

¹ *Ibid.*, p. 227.

² *Ibid.*, p. 227.

to be used; this is based on the assumption that all schools throughout the state should give at least the same basic work and that uniform texts are required to accomplish that end. Some states, realizing that politics will probably enter into state-wide adoptions, follow an intermediate course and draw up a list from which local authorities may select textbooks. In some instances the state department goes so far as to prepare the examinations which are given to all eighth-grade students and high-school seniors.

Perhaps the most publicized educational activity carried on directly by states is that of operating institutions of higher learning. This, it may be added, is ordinarily not entrusted to the department of education, though there may be cordial relations with that department, but to boards of regents or trustees appointed by the governor or occasionally elected by the voters. All of the states now furnish some educational opportunities beyond the secondary-school level. Forty-six states¹ do more than operate teacher-training institutions; forty-three states have full-fledged state universities. Some of these universities and colleges have already celebrated their centennials, while others do not antedate the present century. In several cases the status of already existing institutions has been changed recently—thus the Connecticut State College has been renamed the University of Connecticut. The states do not follow a uniform policy in coordinating their efforts in the field of higher education, though it would seem that a reasonable amount of integration would be wise. Illinois, Wisconsin, California, Minnesota, and Nebraska, for example, maintain single universities, which furnish training in the arts and sciences, agriculture, engineering, law, medicine, commerce, and a number of other fields. Iowa, Kansas, Michigan, Washington, and Indiana, on the other hand, support two large institutions: one supposedly the university which stresses arts and sciences and professional fields, such as law and medicine, and another an institution which concentrates on agriculture and engineering. In reality the dividing line has frequently been broken down during recent years, with the result that both carry on arts and science instruction. A number of other states have diversified even further. Thus Ohio has the Ohio State University at Columbus which has an agricultural

State In-
stitutions
of Higher
Education

¹ Only New York and New Jersey do not have state universities or colleges. Both support teacher-training schools and both contribute financial aid to universities, including Cornell, Syracuse, and Rutgers.

school as well as arts and professional schools; Miami and Ohio Universities which carry on arts and science, commerce, and teacher-training instruction; and Kent and Bowling Green which, though once teacher-training schools, now enjoy university status. Texas, New Mexico, Colorado, and several other states maintain universities, schools of agriculture and mechanics, mining colleges, and occasionally even military schools.

In addition to furnishing ordinary instruction in the arts and sciences, the professions, agriculture, mechanics, home economics, teaching, fine arts, and divers other fields too numerous to list, state universities often place great emphasis upon community leadership, athletics, adult education, and public service.

Elaborate extension divisions seek to contact virtually every inhabitant of the state, especially those who live outside of large cities. Institutes, forums, clubs, publications, and many other programs are planned for this purpose. One university has constructed an auditorium equipped with elevator stage and theatrical properties of one kind and another which seats three thousand people and puts on grand opera, symphony concerts, Broadway plays, Russian ballet, and other entertainments intended to attract not only the students but people from all over the state. The athletic prowess of the middle-western, southern, and western state universities is too well known to require mention. Extension courses frequently extend educational opportunities to large numbers of those who otherwise could not enjoy them. Wisconsin has developed a program of citizen training and induction, while other state schools have prided themselves on their services to state penal institutions and various state departments. All in all, the institutions of higher learning operated by the states are extraordinarily alert, particularly when they are compared with foreign universities which receive public support.

PUBLIC WELFARE

Until comparatively recently states have not been notably active in the public welfare field, though some of them have carried on limited programs that began far back in the nineteenth century. The national social security program gave impetus to the state welfare programs; indeed within a single year after the enactment of the fundamental federal social security act some eighteen states set up departments of public welfare. At the present time every state in the union

has a department of state government which devotes itself to public welfare and these are usually among the largest and busiest departments to be found in a state capital.¹

In so far as states gave their attention to this field in the past, emphasis was for the most part placed on institutional, or indoor, rather than home, or outdoor, services. Poorhouses, poor farms, almshouses, orphans' homes, and old folks' homes abounded a few years ago, though in most instances they received comparatively little aid directly from the state government beyond perhaps inspection. At present institutions are more strictly supervised by states if they remain in operation, but the outdoor relief and old-age assistance programs have gone far toward emptying many of them. No longer do unfortunates have to leave their relatives and friends behind and, confessing that they are failures by every worldly standard, move to a poorhouse or old-folks' home to spend their remaining years in a dreariness beyond description. The various social security programs are aimed at making it possible to live out one's years in the midst of friends and if old-age insurance, old-age assistance, aid to dependent children, or other coverage is not available direct relief at home is ordinarily given.

Develop-
ments in
Public
Welfare

The social security program in general has already been discussed in connection with the national government.² Unemployment insurance, old-age insurance, old-age assistance, pensions for the blind, and the several programs designed to assist crippled and dependent children are either entirely controlled by the national government or in large measure carried on under its supervision through the medium of grants-in-aid. As we have already noted, the states ordinarily act as intermediaries between the Federal Security Agency and the county departments of public welfare which carry on much of the direct work. The states receive the federal funds, contribute funds from their treasuries, and collect the money assessed on the counties or other local governments for this purpose, finally paying the accumulation to the recipients.³ In addition, the states supervise and offer expert advice to the local welfare departments, being responsible to the national government for the maintenance of stipulated standards.

State
Social
Security
Activities

¹ For detailed discussion of these agencies, see Marietta Stevenson, *Public Welfare Administration*, The Macmillan Company, New York, 1938. ² See Chap. 31.

³ This money may be turned over to counties to be disbursed, but states often make the payments themselves.

In addition to supervising much of the federal social security program, the states frequently assume responsibilities in connection with direct poor relief. In 1940 thirty-six states appropriated money to be used in assisting the counties, cities, and other local governmental units in meeting the cost of poor relief, though in several cases the amount was far from generous.¹ Two states, Pennsylvania and Arizona, assumed the entire burden of poor relief, administering such a program directly through branches of the state department of public welfare scattered over the state.² In all except ten of the states supervision of local poor relief by the state department of public welfare was provided in 1940. Various arrangements were made for this supervision, but the most common one involved county departments of public welfare, which received instructions and inspection from the state departments. The adequacy of the assistance given varies from state to state; in 1941 Pennsylvania and Rhode Island topped the list, averaging \$37.31 and \$30.62 respectively per case in monthly payments, while Mississippi at the bottom spent only \$3.51 per case.³ Nine states⁴ devoted less than 25 cents per capita to this purpose in 1940 in contrast to four states⁵ which exceeded \$5.00. Thirty-one states in the above year gave relief mainly in kind (groceries, clothing, and so forth), while seventeen states followed a more progressive policy and contributed cash which the poor could then use for the purchase of supplies and the payment of expenses. The decrease in relief cases has been encouraging, particularly since 1939. During the two years prior to December, 1941, the decrease in case load was 4.2 per cent in the whole country, but in New York, for example, it was 14.4 per cent.⁶

Intimately related to public welfare, although often technically separated from it, is public housing. In contrast to European countries the United States has been almost unbelievably backward in seeking to outlaw slums and provide decent living conditions for its inhabitants. The various efforts of the national

¹ *Book of the States, 1941-1942, op. cit.*, p. 176.

² *Ibid.*, pp. 176-180.

³ *Social Security Bulletin*, Vol. IV, p. 41, November, 1941.

⁴ These were: Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.

⁵ In addition to Pennsylvania and New York these were California and Illinois.

⁶ In December, 1941, 8.5 per cent of the population of New York was on relief in contrast to 21 per cent in December, 1935. See *Annual Report of the New York Commissioner of Social Welfare, 1941*.

government to promote adequate housing have been discussed at an earlier point,¹ but it remains here to note what the states are doing. A few states, Massachusetts, New York, Wisconsin, and North Dakota, for example, tried to grapple with the housing problem before the national government entered the field, but most of the interest on the part of the states dates from 1935. In 1941 thirty-eight states had established state housing agencies, though some of these existed largely on paper.² Thirty-four states had approved federal aid for housing projects; thirty-seven had provided that public housing projects should be exempt from state taxes; and there were altogether 483 housing authorities engaged in various stages of providing actual housing for the poor.³ The amount of building completed, under construction, and in the planning stage was hardly more than a drop in the bucket, but it is significant in that it indicates that the states have at last become conscious of the problem.

PUBLIC HEALTH

Almost a century ago a movement started in the direction of state responsibility for public health. Epidemics, such as cholera, smallpox, scarlet fever, yellow fever, and diphtheria, swept beyond the bounds of local communities and before they had subsided caused the deaths of multitudes of people. No one locality could deal effectively with the problem because after the contagion had become general it was too late to cope with the situation. In 1849 Massachusetts created a committee to investigate public health and sanitation and to report on what steps should be taken by the state to control outbreaks of disease and improve health generally. This commission did an excellent job and its report gave impetus to the establishment of public health agencies throughout the country.

At the present time every state maintains some sort of agency which is charged with promoting public health. A list compiled in 1941 indicates that twenty-eight of the states have departments of public health, sixteen have boards of health, and two combine public health and welfare under a single agency.⁴ In

Public
Health Or-
ganization

¹ See Chap. 31.

² Kansas, Iowa, Maine, Minnesota, Nevada, New Hampshire, Oklahoma, South Dakota, Utah, and Wyoming did not have state housing agencies in the above year.

³ See *Book of the States, 1941-1942, op. cit.*, p. 219, for a table showing the records of the various states.

⁴ Utah and Mississippi are not included in this tabulation. *Book of the States, 1941-1942, op. cit.*, pp. 373-374.

general, the state departments carry on research, collect vital statistics, license doctors, and inspect the various sections of the state, but they do not perform all of the basic functions for these are entrusted to local health authorities. Hence the state agencies devote large amounts of their time and energy to supervision of local health efforts, sometimes going so far as to remove local officials from office if they are derelict in their duties.

It might be assumed that after almost a century all of the states would be well organized to meet problems arising out of public health.

**Specific
Activities
of State
Public
Health
Agencies** However, the record is an uneven one, with some states displaying impressive activities and others doing comparatively little. A survey made in 1941 indicated that there is not a single function which every state health department in the union carries on; even in the collection of vital statistics the name of North Carolina does not appear.¹ Forty-four state health agencies sponsor programs related to maternal and child health; forty-three states give attention to sanitary engineering which includes the disposal of sewage and other wastes injurious to public health. Thirty-three health departments operate laboratories for the analysis of various specimens and samples; the same number regulate the nursing profession. Strangely enough, only twenty-nine report programs in preventive medicine and only twenty-five seek to promote health by educational programs. Twenty-six health agencies give their attention to safeguarding the milk supply; twenty-five carry on programs related to dental hygiene; twenty-four seek to regulate industrial hygiene; and twenty-two stress the prevention and control of epidemics. Twenty-five are organized to give special attention to tuberculosis; twenty-two assist crippled children; and ten have cancer-control programs. Twenty-one inspect food and drugs to safeguard the people. From this list it may be realized that the activities of state health departments are varied; but it is not reassuring to note that many agencies report no programs in certain fields which are currently regarded as highly important. This, of course, does not necessarily mean that no work is being done along these lines by a given state, for it is always possible that some department other than that dealing with public health is entrusted with the task. Nevertheless, in many of these fields it is not probable that a great deal is being attempted.

¹ See the *Book of the States, 1941-1942, op. cit.*, pp. 204-205.

INSTITUTIONS

One of the heaviest burdens carried by the states is in connection with the operation of various types of institutions for the care of the mentally unbalanced, the chronically ill, and the law violators. The stress and strain of modern society has caused increasingly large numbers of people to fall into these classes and the state has been called upon to provide facilities for their care. Again and again states have built new hospitals and prisons and enlarged old ones, thinking that they had relieved the need at least for a decade or so, only to find that congestion seems to be able to keep abreast of or even outdistance the construction of new institutions. Many different types of institutions are to be found in the forty-eight states: tuberculosis hospitals, hospitals for mothers and children, epileptic centers, industrial farms, schools for problem children, penitentiaries, and homes for feeble-minded. In the following paragraphs we will consider only two general types: hospitals for the care of mental cases and correctional institutions.

In so far as institutions seek to treat those who are mentally ill but not incurably insane, they are closely related to the work of health agencies. The more progressive states have provided psychopathic hospitals for some years because private facilities have been inadequate and beyond the purse of large numbers of people. Some of these, for example the psychopathic hospital in Massachusetts, have accomplished rather remarkable results and returned numerous persons to society who might otherwise have become hopelessly insane. Public opinion in some states has not demanded that programs of this character be undertaken and in general comparatively little attention has been given to this phase of the work. The other type of mental institution is intended to care for those who are definitely insane and who are regarded as dangerous to society. All of the states have been forced to take cognizance of these cases and provide facilities for their care. It may be added that the support provided is frequently so small that crowding reaches disgraceful proportions, little can be done in the way of treatment, and adequate supervision becomes difficult. In more than one state facilities are so lacking that insane persons who are not regarded as dangerous have been lodged in poor farms. Salaries of \$30 or \$40 per month paid attendants in some of the states are so unattractive

**Mental
Asylums
and Hos-
pitals**

that many employees can hardly be considered of even mediocre caliber. Where politics has entered the insane institutions—unfortunately not a rare occurrence—conditions sometimes become shocking. Superintendents know nothing about the administration of an institution; physicians, often without training in mental illness, who have failed at private practice perhaps because of inordinate drinking receive appointment because they have influential friends; trained nurses are almost entirely lacking.

There seems to be no uniform system of administering institutions for the mentally ill. In 1941 eighteen states maintained departments or boards for supervising their asylums and hospitals; eight placed these institutions under the department of public welfare; eight preferred general departments which had oversight over all mental, charitable, and correctional institutions; and one curiously enough saddled the department of finance and budget with this difficult task.¹

With the highest crime rate in the world and approximately as many homicides every year as the remainder of the western countries put together, it is to be expected that the United States would have an elaborate system of correctional institutions. The national government assumes responsibility for offenders against the federal laws; cities and counties maintain jails for minor offenders or the care of major offenders who are awaiting trial. However, the heaviest burden falls to the states, which have frequently found their resources taxed to the utmost. After building prisons and more prisons, the facilities are frequently far from reasonably adequate.² Penitentiaries in Ohio and many other states now house approximately twice as many inmates as they were intended for, which not only makes adequate care difficult but sometimes leads to riots. Most of the states now recognize the desirability of segregating prisoners on the basis of their offenses and consequently maintain penitentiaries for long-term prisoners, reformatories for the intermediate cases, and farms or other types of institutions for those sentenced to a few months. In addition, separate prisons for women offenders are frequently encountered, while industrial schools for juvenile cases are commonplace.

¹ This report is not complete. See the *Book of the States, 1941-1942, op. cit.*, pp. 376-377.

² See F. E. Haynes, *The American Prison System*, McGraw-Hill Book Company, Inc., New York, 1939.

The cost of constructing penitentiaries, such as Sing Sing in New York, San Quentin in California, and Charleston in Massachusetts, is so great that there has been some agitation in favor of less formidable walls, guard houses, and cell houses. The **The Cost of Prisons** per inmate cost of building one of these forbidding prison fortresses approximates \$6,000, or enough to build a reasonably comfortable little house for a family of four or five persons. Those who emphasize protecting society against criminals argue that less expensive construction of prisons is poor economy in the long run, but those who stress rehabilitation reply that after a prisoner has served a term of ten years or so in iron cages surrounded by high walls he can rarely take a place again as a member of society. The newer prisons may be less safe; yet they seem to be able to graduate their inmates back to normal existence more successfully.

One of the chief problems in state penal institutions is that of giving the inmates something to do. At times the legislature will not appropriate money for shops, machinery, and instruction; more **Prison Labor** serious than that is the vigorous opposition manifested by organized labor toward the sale of prison products. If the goods made by the prisoners cannot be disposed of, it is obvious that work cannot be given; if work cannot be given, there will be a deterioration which will probably make the prisoners more dangerous to society when they are released than when they entered. The shortsighted policy of organized labor has resulted in the passage of numerous laws restricting the sale of prison-made goods, thus condemning many prisoners to social destruction. Nevertheless, a considerable amount of work is being provided in connection with the making of license plates for automobiles and the furnishing of equipment for other state institutions and offices.

The political organizations in many states regard the correctional institutions as peculiarly their own, not because their leaders who resort to bribes and stuff ballot boxes sometimes end up there, but because there are a fairly large number of positions which can be used to reward the faithful. Modern **Administration of Correctional Institutions** penologists are of the opinion that prisoners require the services of psychologists, sociologists, social workers, psychiatrists, and others who are professionally trained and the politicians are being forced to surrender a monopoly in the correctional institutions; yet even so it is probable that the majority of wardens, guards, and other

employees receive their places on a political basis. This means that politically minded governors like to keep the prisons under their immediate control, even if separate departments are provided for their administration. An analysis of thirty states in 1941 revealed that twenty-four placed their correctional institutions under prison boards, departments of correction, departments of institutions, boards of parole, and so forth, while six followed what seems a more logical course of integrating correctional activities with the efforts of the department of public welfare.¹

SECURITY OF WORKERS

During recent years there has been considerable interest in certain states in minimum-wage and maximum-hour laws, particularly as applied to minors and women. Some of the legislation has been inspired by the activities of the national government in this field, but states such as New York and Massachusetts have been alert to the relationship between reasonable hours and minimum wages and good health and morals for many years. The early efforts of the states encountered the barrier set up by the decisions of the Supreme Court of the United States; when that court reversed itself in 1937,² the way became open for state action. In 1941 every state, with the exception of Alabama, Florida, Indiana, Iowa, and West Virginia, had on their statute books maximum-hour legislation, while twenty-six states had set up minimum-wage standards for women or women and children and Connecticut enforced a law which applied to men, women, and children.³

Under the common law it was a very difficult matter for an injured worker to obtain compensation from his employer. He had to go to court and prove that he had not contributed to the accident by his own negligence, which would have been hard enough under any circumstances, but with the shrewd legal counsel retained by the employer to raise questions became almost impossible in many instances. Companies frequently followed the policy of spending thousands of dollars for attorneys' fees and court costs rather than pay a few hundred dollars to an employee injured during the course of employment. The result was that incapacitated workers became a

¹ See *Book of the States, 1941-1942, op. cit.*, pp. 363-364.

² See *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937). In this case the court specifically overruled the earlier *Adkins* case.

³ *Book of the States, 1941-1942, op. cit.*, p. 208.

charge on society, frequently having to be supported at public expense by a state or local governmental agency. Public opinion after long lethargy finally became aroused to the iniquities of this situation and the result is that every state except Mississippi has now abandoned, at least in part, the common-law principle.¹ However, there is much diversity in the statutes which apply to injuries. In 1941 fifteen states had compulsory systems, while thirty-two permitted companies to avail themselves of the state facilities, make arrangements with private insurance companies, or run the risk of suit in court.² Eleven states in that year maintained their own funds into which employers paid in assessments based on the number of persons on their pay rolls.

In five states³ the provisions of the law affected only those workers in businesses employing ten or more persons, while in the other states more generous coverage existed. Some states limit workmen's compensation to industrial workers, while others include clerical and indeed almost all types of employees. A case in Ohio a few years ago involved a college professor who had been invited to deliver a high-school commencement address. During the exercises he was handed a rose by one of the class members; he pricked his finger and later died from blood poisoning. His heirs claimed compensation from the school board and the state workmen's compensation board found in their favor. It must be remembered that the injury must arise out of course of employment; consequently one state refused an award to relatives of workers who were run over by a train on their way to work. In general, negligence on the part of a worker during working hours does not affect compensation—even if an employee sticks his hand into a machine the assumption is that he was too weary to know what he was doing. However, in some states reasonable care is expected. For example, in California a clergyman who had lost his voice through shouting unnecessarily in delivering sermons was refused compensation.

Coverage
of Com-
pensation
Laws

Eighteen states promote the security of workers by regulating conditions under which industrial work, such as the making of men's clothing, can be done at home.⁴ Fifteen states authorize the labor department to collect wages for workers in cases

Miscella-
neous

¹ For an authoritative treatise dealing with the various state systems, see W. F. Dodd, *Administration of Workmen's Compensation Laws*, Commonwealth Fund, New York, 1937.

² *Book of the States, 1941-1942, op. cit.*, p. 209.

³ Georgia, Missouri, South Carolina, Vermont, and Virginia.

⁴ *Book of the States, 1941-1942, op. cit.*, pp. 206-207.

of difficulty.¹ Sixteen states limit the use of injunctions in labor disputes, while nineteen outlaw yellow-dog contracts.² Three states maintain little N.L.R.B.'s to regulate relations between labor and capital, while four additional states have agencies for enforcing laws prohibiting unfair labor practices, coercion, and related acts.³ In 1941 twenty-nine states had separate departments of labor; five others operated industrial commissions; and eleven combined labor administration with commerce, agriculture, and other functions.⁴

BUSINESS AND FINANCE

Although many corporations carry on activities in more than a single state, the rule remains that the chartering of corporations belongs to the states rather than to the Federal government. Senator O'Mahoney and others have sponsored legislation which would transfer this responsibility from the state sphere to the federal, but despite all of the arguments which have been advanced little progress has been made in this direction. Federal chartering and regulation of corporations would almost certainly mean that corporations would lose some of the freedom which they now enjoy and consequently it is vigorously opposed in certain quarters. As it is, some of the states have strict laws in regard to the chartering of corporations and supervise corporations which they charter quite effectively, while Delaware and other states prefer to follow a much more liberal policy. The result is that while some corporations are as carefully controlled as would be the case under federal auspices, others manage to do about as they please. A number of the largest corporations which are active throughout the United States are chartered by Delaware, though they have no factories there, maintain their principal business offices elsewhere, and indeed do no more than keep modest offices in that state in order to meet the requirements of the law. In 1941 thirty-six states charged the secretary of state's office with licensing corporations; eight gave this duty to corporation departments or commissions; three saw fit to entrust financial departments with such a task; and North Carolina authorized its public-utilities commission to handle the matter.⁵

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, pp. 379-380. Florida, Idaho, and South Carolina are not included in this summary.

⁵ *Book of the States, 1941-1942, op. cit.*, pp. 362-363.

All of the states provide for the chartering of state banks and consequently find it necessary to establish administrative agencies which inspect and supervise banking institutions. The states **Banking** vary in their practices, with some insisting upon standards which approximate those stipulated by the national government in the case of national banks and others choosing to follow a more tolerant course. This was eloquently demonstrated during the banking crisis in 1933, when few state banking institutions proved to be insolvent in New England and certain of the eastern states in contrast to large numbers in other states. Thirty-four states operated separate banking or banking and insurance departments in 1941; the remainder authorized the state auditor, department of finance, corporation commission, or other agencies to supervise banks.¹

While insurance is ordinarily written by companies or associations which extend beyond the confines of a single state, it is the current practice to insist upon state regulation. In many instances **Insurance** an insurance company must be licensed before it can do business in a given state. Before a license can be received it is necessary to demonstrate financial soundness and perhaps to deposit funds with the state to guarantee payment of obligations within that state. Twenty-seven states in 1941 provided separate departments of insurance or insurance and banking to administer their insurance regulations, while the others depended upon the auditor, the secretary of state, the attorney general, the corporation department, and other agencies to handle this work.²

Though the people of the United States are reputed to be shrewd when financial matters are at stake and indeed may be charged with being "dollar grabbers" by foreign critics, they are actually **Securities** gullible in all too many instances. Central Park in New York City and the Common in Boston are "purchased" several times every year by unsophisticated persons who do not realize that public property is not to be disposed of by slickers who prey on human sheep. Of course, these are extreme cases, but large numbers of people lose their money by investing in schemes which at best involve grave risk and at worst do not offer the slightest chance of paying out. There are numerous Ponzis who go about throughout the country promising

¹ *Ibid.*, pp. 357-359.

² For a table showing the provisions made by the states, see the *Book of the States, 1941-1942, op. cit.*, pp. 377-378.

to double, triple, or even quadruple the money of those who will seize the golden opportunity. The federal Securities and Exchange Commission has alleviated the situation somewhat, but its authority is limited to those companies which do business in more than one state, use the mails to promote their business, and issue relatively large amounts of stocks or bonds. This leaves a large field which the states must assume responsibility for, unless their citizens are to be cheated out of large amounts of money. Although wild-cat promoters had almost a clear field a few years ago, it is now commonplace to require the registration of securities with state departments which investigate more or less carefully to ascertain the resources backing the stocks or bonds. No one can doubt that the situation has been improved in large measure as a result of this regulation, though much remains to be done in the less progressive states.

In many business enterprises it is possible for the customer to choose the particular merchant or store which he will patronize. Where **Public** petition prevails, businesses engaged in the same field are **Utilities** forced to keep their charges within reasonable limits and maintain certain standards. However, in the case of utilities which furnish electric current, gas, telephone service, and at times water, the situation is quite different, since there is only a single company of each variety operating in a locality. Recognizing this fact, states have established regulatory agencies which approve the rates and supervise the service of public utilities which operate within their borders.¹ Some states go even beyond this and require the utilities to submit for approval their contracts with other utilities, their security issues, and other financial practices. The utility companies themselves have sometimes taken advantage of this requirement by trading political support and campaign contributions for control of the membership of the commissions, thus making it possible for them to avoid unpalatable dictation. In other instances they have retained an array of the best legal talent to present their cases to the commission, hoping that this would win them a victory. The consumers, on the other hand, are not organized and usually can do little more than employ the least expensive counsel to represent them. The result has been that rates have sometimes been considerably higher than was justifiable. The more responsible utilities may not take unfair advantage, while public sentiment has

¹ For detailed treatment of this topic, see W. E. Mosher and F. G. Crawford, *Public Utility Regulation*, Harper & Brothers, New York, 1933.

done something to improve the quality of public-service commissioners. Some states have furnished at public expense full-time counselors to represent the public interest. Thus while there is room for improvement the present situation is probably better than at any previous time. Forty-four states in 1941 charged public-utility commissions, public-service commissions, railroad commissions, and corporation commissions with regulating public utilities. Washington and Arkansas preferred departments of public service and public utilities respectively, while Rhode Island gave this duty to a department of business regulation and Colorado to the department of law.¹

MISCELLANEOUS ACTIVITIES

For many years states relied on the counties, cities, and other local governments to maintain general law and order and this proved reasonably satisfactory. But with the improving of roads and the perfection of speedy automobiles these local police forces found it increasingly difficult to cope with some of the most dangerous public enemies. Moreover, the integration of hard-surfaced highways into state-wide systems presented the problem of enforcing speed and safety laws. At the present time every state maintains a police force for patrolling state highways, while thirty-five states give their police general oversight of the enforcement of state laws in cooperation with the local police authorities.² State police may arrest violators of state laws; they may be called in by the local police to assist in the handling of homicide and other difficult cases; they frequently provide fingerprint files as well as laboratory facilities for analyzing blood stains, photographing clues, and otherwise identifying guilty persons.

In this connection it perhaps should be noted that all of the states now maintain elaborate systems of highways. These are usually constructed in the first place under federal grants-in-aid which represent about half of the cost, but they have to be kept in repair, marked, and in the northern states cleared of snow in the winter by the states themselves. Twenty-two of the states in 1941 placed their highways under highway departments; eighteen used highway boards or commissions; while eight maintained public works departments which among other functions had charge of highways.³

¹ See the *Book of the States, 1941-1942, op. cit.*, pp. 403-404.

² *Book of the States, 1941-1942, op. cit.*, pp. 172, 394-396.

³ *Ibid.*, p. 375.

To supplement the work of the Federal government and the cities, thirty-nine states in 1941 supported agencies which exercised varying authority over aviation.¹

Aeronautics In addition to agricultural colleges most of the states find it desirable to set up administrative agencies dealing with agriculture. These departments may run the state fair, establish quarantines against fruit, grain, and livestock diseases and pests, **Agriculture** circulate bulletins, and perform other functions of interest to farmers. Thirty-one of the states in 1941 recognized the importance of agriculture by providing separate departments of agriculture, while an additional six had boards of agriculture. In eleven states agriculture was combined with labor, commerce, and other fields into a single agency.² Under a progressive setup the state agricultural department works intimately with the agricultural college, supplementing and assisting rather than competing and duplicating.

More and more of the states are giving their attention to the conservation of natural resources, the development of state parks and recreational facilities, the planting of state forests, and various **Conservation** other related items. Fish and game receive some protection and may be taken legally in all of the states only by those who are licensed, but the record in other conservation activities is less impressive. In 1941 thirty-seven of the states went so far as to support departments or bureaus of conservation, sometimes grouping two or three functions including conservation together under a single agency.³ In contrast eleven states made no provision for conservation activities.

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SECTION VI

LESSER UNITS OF GOVERNMENT

CHAPTER XLV

TERRITORIES AND THE DISTRICT OF COLUMBIA

IT IS probable that comparatively few Americans are interested in an empire for the United States or indeed in colonies at all. It is true that the Lindberghs and Clarks of Idaho sometimes declare publicly that the United States might be well advised to annex Canada, Mexico, and indeed extensive portions of South America, but they arouse more resentment and ridicule than support among the rank and file of the people. At the conclusion of World War I, when the United States had an opportunity to assume the responsibility for mandates and certain persons in high places apparently entertained the idea of entering into such a relationship with certain parts of the Near East, the storm of public protest soon put an end to any remote possibility of this being done. Some years later when colonies, even of a seemingly worthless character were being eagerly sought by Italy and Japan, the United States consented to the independence of its largest colonial possession: the Philippines. Yet strangely enough the United States has the reputation in certain quarters abroad of being grasping and avaricious, even to the point of seizing the possessions of neighboring countries. In many of the Latin-American countries the reputation of the United States in this respect has been and still is to a considerable extent quite lurid; we are the "colossus of the North," a gigantic ogre which has a well-developed taste for gobbling up the smaller countries which are in the Western Hemisphere.

It might appear at first sight that this fear which foreign people have of us is too ridiculous to warrant attention. However, the very fact of its existence is sufficiently serious, particularly during a time when the Latin-American countries are being wooed by the emissaries of Hitler and Mussolini, to call for the vigorous steps which are being taken by our State Department to exorcise the bogey. Needless to say, if the neighbors to the south think of us as scarcely better than the totalitarian countries of Europe there is no very great probability of satisfactory relations, despite all the ballyhoo, good-will missions, and grandiloquent exchanges of compliments. Some of this distrust abroad is doubtless

Reasons
for Our
Reputa-
tion
Abroad

caused by the irresponsible utterances of such men as Senator Clark of Idaho, for the Nazi agents in the Latin-American countries make Herculean efforts to emblazon the most sensational portions of such speeches in front-page headlines throughout the territory from the Rio Grande to the Straits of Magellan. However, the difficulty is more basic than this; the main effect of current utterances from those who speak so sensationally is to add fuel to the flames already kindled. There are two aspects of our history which are perhaps better known outside of the United States at present than remembered within and which contribute very largely to our unsavory name as an aggrandizing nation.

In the first place, it is constantly remembered in the Latin-American countries that generous portions of our present continental territory were taken by force from Mexico. The land included in the states of California, Arizona, New Mexico, and Texas was once either entirely or largely owned by Mexico and the United States with little provocation seized it. Puerto Rico was more recently separated from Spain after the ultimatum laid down by the United States had been accepted by Spain. The Panama Canal Zone was handled more shrewdly and from behind the scenes rather than in public, but there is a widespread feeling in the Latin-American countries that it represents another case of our taking what we want, irrespective of the justice or niceties involved. Perhaps even more significant has been our intervention in and economic exploitation of certain Central American countries. Again and again armed forces have been sent to these countries when we have not liked what transpired; at times these military forces have been maintained in a single country for several years, though disorder had apparently ceased to threaten. When repayment has not been made of money loaned by American banking firms, the government of the United States has sometimes in the past taken vigorous steps to compel payment, even if it required the appointment of American agents to receive customs duties over a period of years. If the United States has not liked a certain head of state in Central America, it has not hesitated in the past to refuse recognition, which in most cases has been tantamount to the eventual downfall of that regime. The policy during the last decade has been very different; indeed we have leaned over backward in many instances to avoid the merest suspicion of interference in the affairs of sister states; but the memories of the past remain vivid.

**Our Past
Record**

It is, of course, impossible to predict what the attitude of the United States toward colonial possessions may be in the future. Judging from the oft-repeated sentiment that we have enough internal **Future Interests** problems without taking on new external ones, our "Good Neighbor Policy" which is being pushed so vigorously in the Western Hemisphere, and our relative economic self-sufficiency, it would seem that our desires are not likely to point in the direction of foreign possessions. Nevertheless, it is interesting to note the predictions of some reasonably objective foreign observers to the effect that World War II will end with the United States in a position to dictate to the rest of the world and that this will involve a world-wide empire for us.

For approximately three decades the continental United States has been completely covered by states, except for the small area included in the District of Columbia. Hence the territorial possessions of the United States are now separated either by extensive bodies of water or great areas of land from the homeland. Hawaii, Puerto Rico, Guam, Samoa, and the **Present Status of Our Territories** Virgin Islands are insular in character, while Alaska and the Panama Canal Zone, though parts of the American continents, are separated from the United States by hundreds of miles of territory belonging to other countries. The Philippine Islands had been organized into a commonwealth, which, prior to the invasion by Japan, was in the process of assuming its own independence.

It has been held by the Supreme Court that the Constitution does not automatically follow the flag ¹ and that Congress has large discretion under the provision in the Constitution which reads: **Types of Territories** "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." ² From this there has been developed the classification of territories into two types: incorporated and unincorporated.

Unless Congress ordains by law or a treaty provides otherwise, a territory is regarded as belonging to the unincorporated **Unincorporated Territories** class. This means that Congress may set up any form of government that it pleases if reasonable attention is paid to the general principles underlying the Constitution. The inhabitants

¹ See *Balzac v. People of Porto Rico*, 258 U. S. 298 (1922).

² Art. IV, sec. 3.

are not citizens of the United States; nor are they entitled to the constitutional rights of jury trial, grand jury indictment, and related personal freedom. The territory is not part of the United States technically and hence import duties may be levied upon goods sent from the territory to the United States, much as in the case of foreign products.¹ Guam, Samoa, the Panama Canal Zone, Midway, Wake, and the Virgin Islands fall into the unincorporated class. The Philippine Islands were regarded as unincorporated when they were organized as a territory of the United States; as a commonwealth they did not fall definitely into either class, but rather were regarded as semidetached.

An incorporated territory, on the other hand, is part of the United States; its inhabitants are citizens of the United States; and the Constitution as far as it is applicable applies to it. Alaska and
**Incor-
porated
Territories** Hawaii are incorporated territories in every sense, while Puerto Rico has many of the characteristics of this type of territory. In this last case Congress has provided that citizenship shall be enjoyed and the principal provisions of the Constitution shall apply and this might seem by implication to bring about incorporation,² although no formal steps in that direction have been taken.

The small islands situated in the Pacific have, with the exception of Hawaii, so few inhabitants that there is little likelihood of their being
**The Question of
Future
Statehood
for the
Territories** admitted as states; the Panama Canal Zone is, of course, obviously in the same category because it is perpetually leased from Panama. It is probable that the other territories, with the exception of the Philippines if they are considered in this class at all, have some hopes of attaining statehood either shortly or at some remote time in the future. Hawaii has been engaged in an endeavor to acquire statehood for several years and in 1940 was authorized by Congress to submit the question of whether such a status was desired to its voters, with the result that a majority showed themselves definitely favorable. The leaders in the Hawaiian movement point to the fact that their islands have a larger population than several of the states and that they contribute larger sums in the form of taxes to the national Treasury than a half a dozen or so of the states. They argue that large numbers of substantial citizens of Ameri-

¹ See *Downes v. Bidwell*, 182 U. S. 244 (1901).

² However, the Supreme Court declared in *Balzac v. People of Porto Rico*, 258 U. S. 298, "On the whole, therefore, we find no features in the Organic Act of Porto Rico of 1917 from which we can infer the purpose of Congress to incorporate Porto Rico into the United States."

can origin now reside in the islands, that the educational standards are high, and that the strategic importance of the islands is admittedly very great. Opponents in the continental United States point to the considerable number of Hawaiians who are of oriental descent, and question whether they would constitute an asset to the United States despite the assertions made to the effect that the loyalty of the great majority to American institutions is well established.¹ Alaska has been less active in promoting its own claims to statehood. Its population has the advantage of being similar to that of the continental United States, but their sparseness is a considerable barrier. Puerto Rico has been promised statehood by Congress at some future time if all goes well; yet there is some question whether the majority of the Puerto Ricans desire this status rather than their complete independence.² All in all, the problem of statehood for the three major territories is somewhat complicated by factors which are not entirely clear at this time. Hawaii at present seems to have the most immediate prospect of being admitted to the union as a state.

Until quite recently no uniform provision has been made for the central administration of the several territories. The War Department has had general oversight in the case of the Philippines and the Panama Canal Zone; the Navy has assumed responsibility for Samoa, Guam, and other tiny insular possessions; while the Interior Department has had charge of what was not otherwise taken care of. For a number of years there has been a growing opinion that it was hardly satisfactory from the standpoint of the United States and certainly not fair to the territories to have such a haphazard system of administration. In the cases of those territories under the War and Navy departments there was some evidence that the primary consideration was that of national defense rather than the welfare of the territories themselves. At any rate the emphasis has been placed recently on civil rather than military problems and the reorganization effected during the 1930's transferred all but a few of the very small possessions to a Bureau of Territories in the Department of the Interior.³

Central Admin-
istration
of
Territories

¹ After the attack on Pearl Harbor Secretary Knox referred to "fifth column" activities in Hawaii as second only to those in Norway.

² There is a strong nationalist party in Puerto Rico. During recent years the activities of this group have led to disorder and even in a few cases murder.

³ Professor Rupert Emerson of the department of government at Harvard, an expert in colonial government, has recently been the chief of this bureau.

HAWAII

Of all the territories the one which is most familiar to the average citizen is Hawaii. Large numbers of people have visited the islands which constitute this possession; Hollywood has been fond of using the beaches, luxuriant vegetation, and colorful ceremonies as backgrounds in movies; and the soft music, hula dances, and picturesque costumes of the few remaining natives have attracted the attention of the rank and file of the people of the mainland. The prosperity of the islands growing out of the pineapple and sugar industries as well as tourist and naval activities has made it possible for substantial revenues to be collected by the federal Treasury. The tension which has for some years characterized the political scene in the Pacific has caused the naval facilities of the islands to be enlarged on a vast scale, until the principal bastion of the United States for the protection of the west coast is now ordinarily considered to be the Hawaiian Islands, particularly the great naval base at Pearl Harbor which is the headquarters of a large part of the American fleet.

The territory of Hawaii is governed under an organic act which was passed by Congress in 1900 and which has, of course, been amended from time to time.¹ This act serves Hawaii very much as a constitution does a state, though it is somewhat more positive in character than most of the state constitutions. It stipulates universal adult suffrage for those able to speak, read, and write English or Hawaiian, authorizes the election of a single delegate to the House of Representatives in Washington, and provides for the structure and functions of the territorial government.

The organic act sets up two elective chambers, a senate and a house of representatives, as the legislative branch of the government, conferring on these bodies the authority to make laws, levy taxes, and vote expenditures of public funds. Acts of the legislature are subject to the veto of the governor, but a veto may be overridden by a two-thirds vote of both houses. Although somewhat smaller in size than some of the state legislatures, the Hawaiian legislature is much like them in both organization and powers. One difference may be noted in the authority granted. If a legislature does not

¹ This act and other aspects of the territorial government are discussed in W. H. George and P. S. Bachman, *The Government of Hawaii, Federal, Territorial, and County*, University of Hawaii Press, Honolulu, 1934.

pass appropriation bills for the running of the government, the governor is required to call a special session and until it has made some provision the territorial treasurer with the advice of the governor is authorized to pay out public funds on the basis of appropriations made the preceding year. This provision does not necessarily obviate deadlocks between the governor and the legislature, but it does make it possible for the government to operate without undue strain and furthermore reduces the control which the legislative branch has over the executive.

The chief executive of the territory of Hawaii is known as "governor." His general duties resemble those of a state governor, but he receives his position at the hands of the President of the United States rather than by popular election. The problems of the islands are not such as to require the elaborate administrative setup encountered in states such as New York, Illinois, Pennsylvania, and California, but there is a secretary, a treasurer, an attorney general, a commissioner of education, a department of public welfare, and the conventional agencies ordinarily found in one of the smaller states. The chief administrative officers are appointed by the governor with the consent of the territorial senate.¹

Executive
and Admin-
istrative
Officials

Hawaii has a system of territorial courts organized in three grades and headed by a territorial supreme court. There is also a federal district court, which maintains its headquarters at Honolulu.

Courts

ALASKA

Alaska, having been acquired in the 1860's, claims a position as the oldest of the territories. Despite its vast area and varied contour, its salmon fisheries and mines, and its reasonably mild climate along the coasts of the southern portion, it remains very sparsely populated. Attempts have been made to settle it with subsistence homesteaders from the United States, but for one reason and another many of the original colonists have not remained. Proposals have been made to open it to European refugees as a haven, since it has no lack of resources and needs additional population.

Alaska is governed under an organic act passed by Congress, though the American citizenship of its inhabitants is stipulated in the treaty with Russia under which it was acquired. It has a governor appointed

¹ For further discussion of the framework of government see R. M. C. Littler, *The Governance of Hawaii*, Stanford University Press, Stanford University, Calif., 1929.

by the President of the United States who is assisted by a secretary, a treasurer, an attorney general, an educational commissioner, and other administrative officials. A bicameral legislature, whose members are elected by the voters, is empowered to make local laws which provide for the maintenance of law and order, raise money, and appropriate public funds. Its acts are subject to veto by the governor, though the veto may be overridden by a two-thirds vote; Congress may also disallow acts which it passes. A complete system of courts organized in the traditional pattern heads up in a territorial supreme court. The voters choose a single delegate to sit in the House of Representatives in Washington; he may speak on business which is of interest to Alaska, but he has no vote.¹

PUERTO RICO

In contrast to Hawaii and Alaska, Puerto Rico is not well known to the average citizen of the United States. He has a vague idea as to its location, knows very little about its cultural traditions and people, and fails to appreciate its problems. Puerto Rico came to the United States as a result of the Spanish-American War and for a number of years occupied a somewhat uncertain status because the United States scarcely knew what disposition to make of it. The Foraker Act of 1900 made some provision for its government, but it was not until 1917 that Congress got around to passing an organic act which applied especially to the island. The very uncertainty of the situation has doubtless contributed to the sad plight of the territory which a few years ago was characterized by a former President after a visit as a gigantic poorhouse. The population is larger than the island can comfortably support; the resources of the island are less ample than they might be; and the people have been more or less neglected by the politicians who until recently were sent there as governors as a reward for loyal political service in the United States. The fact that the language is Spanish, that the cultural background is Latin, and that the legal institutions are founded on Roman rather than the common law, all serve to complicate the situation. A large section of the population has never reconciled itself to American rule and looks forward to a time when Puerto Rico will have independent status, much as Haiti and Santo Domingo enjoy at present. During the last few

¹ For additional discussion of the government of Alaska, see G. W. Spicer, *The Constitutional Status and Government of Alaska*, The Johns Hopkins Press, Baltimore, 1927.

years governors interested in Puerto Rican problems have more frequently been appointed, while several of the federal agencies have undertaken studies to ascertain what could be done to improve the economic status, the health, and the literacy of the inhabitants. Nevertheless, the situation remains a difficult one.¹

For some two years after it was taken over from Spain, Puerto Rico was administered directly by the army of occupation. Then the Foraker Act was enacted by Congress to provide for civil government, but it left the island an unincorporated territory. This system was not too satisfactory and in 1917 Congress agreed to ameliorate conditions to some extent by giving American citizenship to the inhabitants and by extending most of the constitutional guarantees, except that of a trial by jury, to the territory. At the same time, a pledge of eventual statehood was made. Puerto Rico, therefore, presents a problem of status at the present time. She has never been formally incorporated into the United States and therefore is not technically an incorporated territory; yet her people are citizens and except for the provision noted above the Constitution applies to them. All in all, Puerto Rico has the fruits of incorporation without the legal status.

Puerto Rico has a bicameral legislature which is approximately the size of those of Arizona and Delaware. The members are elected by those of the adult citizens who can pass a literacy test, but the system is not quite the same as in an American state. In both the senate and the house of representatives the majority of members are chosen on the basis of single-member districts; however, in both houses several of the members are elected to represent all of the people of the island. The powers of the legislature are reasonably broad as far as local problems go, with the usual right to levy taxes and make appropriations. If the legislature does not decide on appropriations before final adjournment, expenditures on the basis of the preceding year are definitely authorized by law. The governor may veto acts of the legislature and the legislature may override these vetoes by passing the bills again by a two-thirds vote. But the matter does not rest here as it does in a state or even in Hawaii, since all bills which are passed over the veto of the governor go to Washington for final decision by the President. Puerto Ricans claim that the President

¹ For a fairly recent discussion of Puerto Rican problems, see V. S. Clark and others, *Porto Rico and Its Problems*, Brookings Institution, Washington, 1930.

almost always sustains the veto of the governor and therefore nullifies any power which the legislature theoretically has to pass the barrier of a veto. Congress may also disallow an act of the Puerto Rican legislature, though this is rarely done.

The President appoints a governor of the island with the consent of the Senate for an indefinite term and it may be added that for one reason or another the turnover in this office has been quite rapid. The President also appoints an attorney general and a commissioner of education, while the governor personally chooses the heads of the other administrative departments dealing with health, finance, agriculture, labor, and interior. The heads of the departments act not only in an administrative capacity, but collectively serve as an advisory council to the governor. A system of territorial courts culminates in a supreme court, whose five justices receive appointment at the hands of the President. There is also a federal district court to handle cases which come under the jurisdiction of the federal judiciary. The voters of the island elect a resident commissioner who has a seat but no vote in the House of Representatives at Washington.

Other Officers of Government

OTHER TERRITORIES

The remaining territories of the United States are comparatively minor in character as far as area and population are concerned, although they may have great strategic significance from a military standpoint. The Virgin Islands were acquired from Denmark in 1917, largely because of their position relative to the Panama Canal. They are now permitted to elect two regional councils, have a governor appointed by the President, and maintain a rather simple system of courts. The Panama Canal Zone has a governor appointed by the President, but it is not regarded as of such a character as to require a legislative body, though it does have courts.¹ The tiny islands beyond Hawaii were long ignored by the powers because of their apparent lack of value; several countries had occupied them at various times and consequently laid claim to them. When a trans-Pacific flying service was contemplated, these islands at once became of considerable importance as landing places and were quietly occupied by the United States despite some reservations made by Australia and Great Britain. Hav-

¹ On certain aspects of the administration of the Zone, see M. E. Dimock, *Government-Operated Enterprises in the Panama Canal Zone*, University of Chicago Press, Chicago, 1934.

ing few if any inhabitants, civil government is not a problem and they are administered directly by the Navy.¹ Samoa is more populous, but it is not of sufficient consequence to be given an elaborate governmental system.

Though perhaps strictly not territories, it may be justifiable to devote a brief space to the naval and air bases recently leased from Great Britain. In 1940 the United States entered into an agreement with Great Britain under which she received eight naval and air bases² on leases for ninety-nine years in return for fifty overage destroyers. These bases, located in an area stretching from Newfoundland more than four thousand miles to the northern part of South America, are intended to strengthen the defenses of our Atlantic Coast. In addition to sections of Newfoundland and British Guiana, they include areas in Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad, and Antigua. A commission from the United States visited these English possessions for the purpose of selecting suitable sites for naval and air bases and Congress has appropriated many million dollars for their fortification. Secretary Hull stated shortly after the lease was announced that they are to be used not only for the defense of the United States but by Latin American countries "on the fullest cooperative basis." These bases are administered directly by the military services of the United States.³

Bases
Leased
from Great
Britain

THE PHILIPPINE COMMONWEALTH

At the end of the Spanish-American War the United States found herself in possession of the several thousand islands constituting the Philippine archipelago. These were separated from the Western Hemisphere by several thousand miles of water and were inhabited by several million persons of widely different language, racial stock, religion, cultural background, and stage of civilization, almost none of whom had a great deal in common with the people of the United States. To those who were infected with the germ of empire the occupation of the Philippines seemed a tremendous event in the history of the United States, since it extended our possessions half way around the earth.

¹ Guam and Wake were seized by the Japanese in December, 1941.

² Two of these bases were gifts of the British people to the people of the United States and are to be held indefinitely.

³ In order that there might be no conflict between the British and American military commanders, Great Britain withdrew her military governor from Bermuda and substituted a civil governor.

GOVERNMENT AND POLITICS IN THE UNITED STATES

However, to those who conceived of a state as made up of people of common language, related cultural traditions, and living in proximity to one another, this was one of the most foolish steps imaginable.

The experience of more than thirty years bore out the contention of the latter group rather than the hopes of the imperialists. The problems of bringing law and order to a polyglot population ranging from the uncivilized headhunters of the mountains to the sophisticated Spaniards and Chinese in Manila were many and complicated, but they were nothing like so difficult as those having to do with health and education. Military authorities worried about the ability of the United States to defend the islands. The Filipinos themselves did not appreciate the benevolent supervision of Uncle Sam and spent a great deal of their energy agitating for independence. The anti-imperialists in the United States could not forget the precedent established by the seizure of a people who did not relish American occupation and requested the government in Washington to undo what they regarded as evil.

But it remained for the sugar and vegetable-oil lobbies in the United States to sever the Gordian knot—or so it seemed at least at the time.

**Territorial
Tribulations** The Philippine Islands are large producers of sugar cane and copra and their chief market after American occupation was the United States. The producers of cane and beet sugar and of cotton seed and vegetable oils in the United States resented the competition of Philippine products which they claimed were produced by cheap labor and under circumstances which menaced their own solvency. When sugar and vegetable oils became a glut on the market in the early 1930's the American pressure interests girded themselves for a last desperate fight in Washington which was aimed at removing or at least drastically reducing the threat offered by the Philippine planters. Finally, in 1933, with the assistance of organized labor which objected to Filipino immigration and the moral support of the anti-imperialists, they managed to cause Congress to pass an act which provided for the complete independence of the Philippines after a period of ten years of gradual weaning away. The President vetoed the bill, but the pressure on Congress had in the meantime become so irresistible that the necessary two-thirds vote was forthcoming to override the veto. This act provided that the approval of the Philippine legislature must be given within one year if the act were to become effective. The Filipinos pro-

**Movement
for Independence**

fessed disappointment at some of the reservations contained in the act of 1933 and hoping to secure more favorable concessions did not accept it.

Despite the failure of the 1933 effort, the pressure interests did not lose heart and in 1934 persuaded Congress to pass a second act which followed the general outline of the earlier act, though it contained several modifications suggested by the Filipinos.¹ **Act of 1934** This was regarded in Manila as the best that could be expected and consequently it was accepted and shortly became effective. The act of 1934 deals chiefly with the governmental setup to be operative during the decade before final independence is granted. The Filipinos were authorized to choose delegates to a convention which would be charged with drafting a constitution for the islands; this was speedily done and a constitution was drawn up and having been approved by the President of the United States was ratified by the voters of the islands. Important reservations permit the United States to continue a considerable measure of control over the Philippines until the ten-year period has elapsed, though in ordinary civil affairs the Commonwealth of the Philippines is given a free hand.

One of the reservations provides that the foreign relations of the commonwealth shall be supervised by the United States and this was interpreted by High Commissioner McNutt to mean that even routine negotiations between foreign consuls and the commonwealth authorities should clear through the office of the high commissioner representing the United States.² **Reservations Made by the United States** No constitutional amendments are to be effective until agreed to by the President of the United States; laws dealing with currency and several other matters must also be approved by the chief executive of the United States, who may under prescribed conditions also suspend any law or executive order issued by the commonwealth. The right to maintain military and naval forces wherever it seems desirable in the islands is also reserved; if serious disorder breaks out which the commonwealth does not find it possible to handle the United States may come in to restore law and order. During the ten-year period covered by the act appeals are permitted in certain cases from the supreme court of the commonwealth to the Supreme Court of the United States.

¹ The acts of 1933 and 1934 are objectively discussed in Grayson Kirk, *Philippine Independence; Motives, Problems, and Prospects*, Farrar & Kinehart, Inc., New York, 1936.

² This ruling occasioned great criticism in Manila and for a time made the High Commissioner anything but popular.

Obviously these reservations constitute a very adequate safeguard to American interests and conversely seriously limit the sovereignty of the Philippine Commonwealth. However, in general the United States has used its authority discreetly and the commonwealth has been permitted to operate without undue interference.

The government set up under the new constitution began to function in 1935 and the United States discontinued the office of governor general, substituting a high commissioner as a representative in Manila. In general the commonwealth government follows the pattern which is familiar to students of American government. There are the three traditional branches, executive, legislative, and judicial, and they are balanced and checked by each other. The head of the executive branch is designated president: the powers attached to the office correspond to those which are conferred on the President of the United States. The original constitution specified that a president should not succeed himself in office, but President M. Quezon was reluctant to surrender office as the end of his first four years approached and an amendment was added which abolished this limitation. A congress of a single house, elected by popular vote, was originally provided to enact the laws, levy the taxes, and appropriate for public purposes, but it was supplanted in 1942 by a bicameral legislature composed of twenty-four senators elected at large and ninety-eight representatives chosen from districts based on population.¹ There are the usual administrative departments, the heads of which are appointed by the president and serve as his cabinet. The court structure is traditional, though the laws administered embody much that is strange to the common law.²

It has been pointed out above how prominent a role the sugar, vegetable-oil, and labor pressure groups played in consummating the movement toward Philippine independence. With this in mind, it is not surprising that certain provisions have been made in regard to the immigration of Filipino laborers and the importation of Philippine products. The migration of Filipino laborers has been carefully restricted, but the dependence of the Philippine sugar and copra producers on American markets was so great and so much American capital had been invested in these enterprises that it was not

¹ See *New York Times*, November 10, 1941.

² Much additional information relating to the governmental structure of the commonwealth will be found in G. A. Malcolm, *The Commonwealth of the Philippines*, D. Appleton-Century Company, Inc., New York, 1936.

feasible to cut off trade relations immediately. However, a quota was at once placed on the amount of sugar and coconut oil which should be admitted annually to the United States without the payment of customs duty. Moreover, after an adjustment period of six years the Philippine Commonwealth agreed, beginning in 1941, to place an export tax on products sent to the United States within the fixed duty-free quotas. At the expiration of the ten-year period, when complete independence is contemplated, Philippine products will, of course, have to pay regular import taxes if they enter the United States, subject to any reciprocal trade agreement that might be negotiated.

Under the existing law the Philippine Commonwealth will achieve complete independence in 1946 and the military forces of the United States will be withdrawn, though naval bases may be retained if they seem desirable. The High Commissioner of the United States now stationed in Manila who exercises a considerable amount of influence, especially in foreign relations, will then be supplanted presumably by a minister

Future Relations of the United States with the Philippines

or possibly an ambassador. However, there is still a possibility that the act of 1934 may be modified before its full terms are carried out. High Commissioner McNutt has placed himself on record as definitely favoring a retention of a reasonable amount of control over the commonwealth, while those who never supported independence, particularly the investors of capital in Philippine enterprises, hope that a change may yet stave off complete separation. The world situation even before the entry of the United States into the war caused a considerable number of Americans to revise their views on the Philippine question. Some of these wanted the United States to withdraw at once because of the dangers involved; others argued that we ought not to sever relations at all because Japan would very shortly come in and take over. The Japanese invasion of the islands has realized the worst fears of those who have viewed Japanese imperialism as a world menace. It is probable that a large part of the population of the United States is now definitely of the opinion that the Japanese must be driven out of the Philippines even at a heavy cost. After that has taken place, the entire relationship of the United States to the islands can be reviewed in light of the international situation.¹

¹ For additional background on the Philippines, see F. R. Dulles, *America in the Pacific*, rev. ed., Houghton Mifflin Company, Boston, 1938; F. M. Keesing, *The Philippines; a Nation in the Making*, Kelly and Walsh, New York, 1938; Grayson Kirk, *Philippine Independence; Motives, Problems, and Prospects*, Farrar & Rinehart, Inc., New York, 1936;

THE DISTRICT OF COLUMBIA

A number of governments, including Argentina, Brazil, and Mexico, separate the national capital from the rest of the country and provide for its direct administration by the central government. The framers of the Constitution realized that the rivalry and jealousy among the states was such that it would be unwise, indeed almost impossible, to locate the permanent seat of the national government within the confines of any one of them. Both Philadelphia and New York served as the headquarters of the government for a time, but the constitutional provision giving Congress the power "to exercise exclusive jurisdiction in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States,"¹ indicates that the framers had other arrangements in mind as soon as they could be conveniently made. Negotiations were started immediately and the first Congress which convened in 1789 staged a long-drawn-out and frequently highly emotional debate as to whether the capital should be located in the North or the South. A compromise which favored the South was finally reached; the necessary land was ceded; and the seat of the government was moved to the District of Columbia on the Potomac in the year 1800. There has been lengthy discussion as to whether the decision to locate the capital in this place was a wise one. Obviously in light of the expansion of the United States from the Atlantic to the Pacific and from the Gulf of Mexico and the Rio Grande to the Canadian border, the District of Columbia is not at all conveniently situated so far as the majority of the people are concerned. A location in the Middle West, perhaps on the Ohio River, would be more logical, but it must be remembered that those living in 1800 did not foresee the rapid westward expansion. The excessive heat of Washington summers is frequently complained of; however, there is little to be done at this late date.

Major L'Enfant, the famous French city planner, was given a commission to lay out the national capital according to the most approved European practices and furnished a street layout which is in considerable contrast to the traditional checkerboard or

J. R. Hayden, ed., *The Philippines, Past and Present*, The Macmillan Company, New York, 1930; and W. C. Forbes, *Philippine Islands*, 2 vols., Houghton Mifflin Company, Boston, 1929.

¹ Art. II, Sec. 8.

gridiron pattern so striking a feature of the American scene. This plan has not been followed in its entirety, but it gives to Washington broad avenues which, instead of running parallel, converge on the government buildings at the heart of the city. Having recently fought a war with England on the principle of "No taxation without representation," it was considered only appropriate that the inhabitants of the District of Columbia, though not residing in a state and therefore not entitled to elect Senators and Representatives in Congress or members of the electoral college, should be given a measure of local self-government. So for approximately three-quarters of a century the residents of the District who qualified as voters betook themselves to the polls and elected a mayor and members of a city council who were entrusted with the ordinary functions of local government. But this arrangement did not work out too well in practice, though there is some question whether it was particularly more objectionable than local government elsewhere at the time. The period of the Civil War and for some years after saw municipal government at perhaps its lowest level in the United States. These were the days of the Tweed Ring in New York and the Gas Ring in Philadelphia; political bosses and rings flourished more or less everywhere; corruption seemed to be the rule rather than the exception. These were the years immediately preceding the writing of the devastating account of city government in the United States by Lord Bryce.¹ Washington was no exception to the general situation and its local government was characterized by graft, extravagance, and inefficiency under a notorious politician often branded a political boss. Disgusted with the stench that arose from the bad government Congress in 1878 decided to abolish local self-government and place the administration of district affairs directly in the hands of agents of the national government.

At the present time Congress makes the necessary ordinances, levies taxes, and appropriates funds for the District of Columbia, supposedly devoting the second and fourth Mondays of each month to this purpose. In reality Congress has so many other mat- **Legislative Provisions** ters to attend to and its members are in so many cases indifferent to district affairs that it delegates much of its authority to the committees on the District of Columbia. These committees have so much authority in district affairs that they are sometimes known as the

¹ See his *American Commonwealth*, rev. ed., 2 vols., The Macmillan Company, New York, 1920, Vol. II, Chaps. 88-89.

"Washington City Council"; they have to have the formal approval of Congress as a whole for most of their actions, including financial measures, but this is ordinarily forthcoming.¹ The congressional committees work in conjunction with the commissioners and in many instances accept recommendations which are made by the commissioners.

Not having a mayor or city manager, the District of Columbia is administered, subject to the control of Congress or its committees on **Commis-** district affairs, by three commissioners.² Two of these are **sioners** appointed by the President with the consent of the Senate from among the residents of the district; both major political parties must be represented and terms are for three years. The third commissioner is an officer of the Engineer Corps of the Army who is detailed by the President for an indefinite period for such service. As a group the commissioners have the power to make routine regulations relating to public safety, health, and the use and protection of property. They also appoint the officials who carry on the many functions entailed in running the district and supervise the general operation of all branches of the district government, with the exception of the schools, which are entrusted to a board of education appointed by the judges of the supreme court of the district. Each commissioner assumes immediate charge of a section of administration: thus the engineer handles public works, another protection of persons and property, and a third health and public welfare, and so forth.

For many years the affairs of the District of Columbia have been administered with at least reasonable efficiency and with no flagrant **An Evalu-** cases of corruption. The streets are adequately paved and **ation** maintained and indeed most of the public works seem to be well above the average. However, the public welfare services have been far less satisfactory and in certain cases have almost been scandalous; the tuberculosis incident, for example, among the Negro population because of poor housing and other intolerable conditions is shocking. The national government pays a substantial share of the costs of operating the District of Columbia because it owns much of the

¹ However, Congress does not always follow the recommendations of the district committees. For example, it refused to accept recommendations made in 1940 which would have increased the share of the national Treasury in district expenses.

² For an extensive account of the government of the district, see L. F. Schmeckebier, *The District of Columbia: Its Government and Administration*, Brookings Institution, Washington, 1928.

property which has a tax-exempt status. The residents of Washington complain bitterly at the size of the federal contribution,¹ maintaining that they are forced to pay for services which in all fairness should be borne by the government whose property benefits.

Dissatisfaction among the inhabitants of Washington reached such a point in the late 1930's that the congressional committees undertook an investigation into the problem of what changes should be made.² After considerable discussion, during which it was found expedient to dispose of most of the proposals made by various organizations and individuals in Washington, they finally decided to recommend that Congress authorize the payment of a larger share of district costs out of the national Treasury. However, Congress refused to follow this proposal on the ground that the general property tax rate in Washington was among the lowest of the cities in the population class exceeding half a million. Hence the situation remains involved; dissatisfaction is rife; and the wishes of the residents receive comparatively little attention. Mrs. Eleanor Roosevelt has called attention to the unsatisfactory public welfare services and it is possible that some improvement will be forthcoming in that sphere. It is probable that the whole problem goes back to the fact that the people who live in the district and are primarily concerned with its services have no formal way of expressing their desires, despite the major part of the expenses of government which they bear. The exigencies of the national government may require this state of affairs, but it is not likely that the residents of the District of Columbia will reconcile themselves to a setup which is so contrary to political psychology in the United States.

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¹ It amounts to approximately \$6,000,000 per year.

² It may be added that the dissatisfaction among the residents is not of recent origin. In the late 1920's L. F. Schmeckebier and W. F. Willoughby took cognizance of this in their book *The Government and Administration of the District of Columbia: Suggestions for Change*, Brookings Institution, Washington, 1929.

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CHAPTER XLVI

COUNTY GOVERNMENT

THE county has been called the "jungle" of the American political scene. The merit system has hardly been able to get a toe hold in this unit of government until quite recently and still covers only a small portion of the field. Political practices in counties sometimes embody the law of the jungle—only the fittest survive in the battle of the tooth and the claw. Perhaps another basis of this comparison is the fact that county government operates in less limelight than the national, state, and city governments, thus suggesting the gloom of a tropical area which is thickly grown over with trees, shrubs, vines, and other vegetation. Again the governmental organization of counties has frequently been so complicated that it is difficult to find one's way about, again corresponding with conditions in a physical jungle. However, it is only fair to note that improvement has taken place all along the line in many counties and that the future may well carry developments to such a point that it will no longer be accurate to use this metaphor in describing this unit of government.

The county is the political unit which is immediately below the state in the hierarchy of American government. Every state, with the exception of Louisiana,¹ is subdivided into counties which serve as administrative units for many public purposes and perform certain governmental functions entrusted to them. There are some 3,000 of them all told in the United States, varying from 3 in Delaware to approximately 250 in Texas. A typical state has anywhere from fifty to one hundred counties, though there is considerable variation even in states that have about the same area and population. For example, Massachusetts has only fourteen counties, while states in the Middle West with smaller populations can claim as many as one hundred. The average county has an area of something like one thousand square miles and a population of more than forty thousand. However, there are counties with as small an area as twenty-five square miles ²

¹ Louisiana has parishes which bear some resemblance to counties.

² Bristol County in Rhode Island has this area.

and others such as San Bernardino ¹ in California and Aroostook in Maine which exceed several of the states in area. In population there is an equally great variation among the counties. Cook County ² in Illinois, which boasts the largest number of inhabitants, is near the four-million mark, while sparsely settled counties in the West sometimes number their inhabitants in the hundreds rather than in the thousands or millions.

The county is in general more important in the southern states than in any other section of the country, though it is relatively significant everywhere at present. In the colonial days two types of local government were established as the basic subdivision: the county and the town. New England colonies followed the latter pattern and for many years did not recognize counties at all. The southern states, on the other hand, with their widely scattered plantation populations, were not in a position to set up such a unit as the town, finding the county better adapted to their needs. As the westward movement took place, the two systems were transplanted from their original homes and established to a greater or less extent in the newer states. Settlers from Virginia and the Carolinas constituted the chief pioneer stock in Tennessee, Alabama, and other southern states and naturally the county has been given preeminent recognition in those states. New Englanders journeyed in large numbers to Ohio, Michigan, Indiana, and neighboring states and consequently the township was given some place in those states. In the Middle Atlantic states, New York, Pennsylvania, and New Jersey, the county and township systems met and a combination plan resulted. New England retains the town as a very important unit of government, superimposing the county thereon. The township remains of some consequence in several of the middle-western states where the New England influence is noticeable, but in most of the states it is the county which claims the chief place in rural sections, though cities frequently dwarf counties in urban areas.

Counties usually are given legal foundation by state constitutions. A state constitution may go so far as to specify the number of counties and lay down the exact limits of the counties stipulated, but that is not the rule. Ordinarily counties are created by

¹ San Bernardino County, with more than twenty thousand square miles, is alone approximately equal to Massachusetts, New Hampshire, and Connecticut combined.

² New York County might be expected to exceed Cook County in population, but it is only one of five counties in New York City.

state legislatures, subject to constitutional limitations which make it necessary in some instances to secure the consent of the people involved. Inasmuch as most counties owe their existence to general assemblies, it is necessary to consult the statutes of many years in order to ascertain how many counties have been set up, since additions are made from time to time as it seems expedient. Lest the impression be given that it is customary to create new counties in the older states, it should be added that the number of counties in those states is already so large that new ones have not been carved out of old ones for many years. However, in the western states, where populations are still growing fairly rapidly and original counties were sometimes several thousand square miles in area, occasional additions are still made.

Although counties perform many important functions, they are in their present form a survival of the days when transportation facilities were poor. A horse and buggy could conveniently make a round-trip journey of twenty miles or so over dirt road: from the farm to the county seat in a single day and counties were laid out on that basis. Now that improved roads permit automobiles to drive ten times or more as far in a day, it is an anachronism to retain counties of four hundred or so square miles. Courts and a full complement of county officers in each county are an expensive proposition, particularly when the amount of work is comparatively small. The number of inhabitants and the resources of many counties are such that adequate services cannot be rendered. Nor is the present-day county very satisfactory as an administrative unit of the state because of its small area and population. Yet determined efforts to consolidate counties in order that the taxpayers' money might be saved and more efficient services rendered have knocked themselves against a stone wall and achieved very little. Legal difficulties constitute somewhat of a barrier to county consolidation, but far more important is the opposition of the local residents. Those who hold county offices and expect to hold these offices in the future resist any change with the greatest of determination because they fear that their positions will be jeopardized. Lawyers who are established in a county seat display distinct hostility when it is suggested that they could just as easily try their cases in a court twenty-five miles away. Owners of property and business men in the smallest county-seat town cannot be convinced that it would be to their interest to have four or five counties joined together. More adequate high

Counties a
Product of
the Horse-
and-Buggy
Days

schools and junior colleges might be possible; better court facilities, including special provisions for juvenile cases, might result; substantial sums of money ought to be saved the payer of taxes; but the opposition ignores such promises.

In so far as form of government is concerned, counties do not fit into the American pattern. That is to say, they are fundamentally different from the national, state, and city forms of government. The typical American pattern divides government into three branches: executive, legislative, and judicial, and provides that each shall be separate. The executive branch, as we have noted, is headed by a President, a governor, or a mayor; the legislative branch has a Congress, a general assembly, or a city council. Curiously enough county government is not divided into these three branches; there is union rather than separation of powers; and there is no single executive to assume a position of leadership. It is true that a few counties have seen fit to hire county managers and that even where they have pursued the ordinary course there is similarity to those cities which have the commission or manager-council forms to the extent that authority is centered in a group of elected officials known as a "council," "commissioners," or "board." Nevertheless, by and large county government follows a pattern which is strangely in contrast to that familiar in the nation, states, and cities.

The more detailed state constitutions sometimes devote considerable attention to the functions which counties are to exercise, but the general assembly is usually permitted some authority in adding new responsibilities and defining old ones. Where state constitutions are brief, the legislature is entrusted with almost full power to control county government, subject to limitations which are specifically laid down. Thus the constitution may provide that counties shall have sheriffs, clerks, treasurers, and other officials, but the legislature has the right to define the duties of these officials and to add new responsibilities as the occasion may arise. Inasmuch as counties have undergone something of the same development which has been noted in the cases of the national government and the states, the functions which are currently performed are different from those associated with these units twenty-five or more years ago. In some states the legislature has enacted a county code which attempts to lay down the general functions of counties, but almost every session of the general assembly will see that code amended or special legisla-

**Fundamen-
tal Charac-
ter of
County
Govern-
ment**

**Basis of
County
Functions**

tion enacted which has the effect of adding new tasks to the list of those already performed.

Some states authorize their counties to assume functions which are not to be found in the counties of other states. For example, some states provide that the assessing of general property shall be done by county officers, while others give this duty to township officials. Again many states make the county welfare department the direct agency for administering the old-age assistance, child welfare, and certain other aspects of the broad social security program, though two states handle this function directly and several others have divers arrangements of one sort and another. In general, counties are expected to maintain law and order, keep records, perform certain fiscal duties, inspect rural public schools, grant permits and licenses of one kind or another, investigate cases of unexplained death, operate institutions such as jails and poor farms, direct the improvement and maintenance of certain roads and supervise the granting of relief to the indigent as well as other welfare activities. In addition, counties are ordinarily the units of government upon which the state judicial system, a part of the state tax structure, and the election setup are based. In many states counties are also taken into account in dividing the state into the districts for the election of state representatives and senators.

**General
Character
of County
Functions**

The county offices are located in a city or town which is designated the county seat. In some counties there is one city which so overshadows the other cities and towns that it is obvious that it will be the center of county government. But in other counties there may be several cities of substantially the same population and importance, each one of which will be sure that it should be the county seat. Inasmuch as only one place can receive the honor, it is not uncommon to encounter bitter rivalry, sometimes going back for a hundred years. In a rural county the town which can get itself made the county seat usually enjoys a distinct advantage over all other settled places in the county; the fact that farmers have to come there for paying taxes, recording deeds, and attending to other legal business naturally tends to make the county seat the center of trade. Consequently one city no more deserving than another may thrive while its rivals must bear the burden of economic doldrums and small-town lethargy. No wonder there is deep-seated antagonism, especially where a town has been the county seat only to be dispossessed by a more

**The County
Seat**

vigorous rival. The location of the county seat is usually determined by the voters, though there are restrictions in some constitutions which limit the frequency of submitting such a question.

THE COUNTY BOARD

With a very few exceptions ¹ counties operate under the general guidance of boards, commissioners, or supervisors who are elected by the voters.² These are usually comparatively small bodies of from three to seven members,³ but Wayne County, Michigan, has more than one hundred. They may be elected at large from the county or from districts into which a county has been divided; in some of the southern states they are ex officio in character, holding their positions on the county board because they are judges, justices of the peace, county clerks, and other county officers.

Unlike state legislatures or city councils, county boards do not ordinarily have elaborate organizations. There are no mayors, speakers, or lieutenant governors to preside over sessions of county boards, though in a few instances a president is elected by the voters for that purpose. But in most counties it is customary to elect the members of the county board as equals, leaving it up to them to choose one of their number to preside. If boards are made up of three or five members, the role of the chairman is usually nominal, since it is possible to carry on business in a most informal fashion. However, if boards run to fifteen or more members it is obviously necessary to have some provision for seeing that proceedings are carried on in an orderly fashion. Rules are not emphasized in the smaller boards, nor are committees likely to be of great importance. Of course, where there are numerous members some attention must be paid to rules and committees may be appointed to handle much of the business, at least in its preliminary stages. Regular meetings of county boards which may last a few hours or again several days are scheduled every month, while special meetings may be called at the pleasure of the members. In a few of the counties where business is heavy, the board may actually be in session the greater part of the time during fall and winter months, especially when the budget is being prepared.

¹ Georgia and Rhode Island have no county boards.

² In Connecticut and South Carolina members are appointed rather than elected.

³ Among the states which have large boards are the following: Illinois, New Jersey, New York, Michigan, Nebraska, Virginia, Arkansas, Missouri, Tennessee, and Kentucky. It may be added that not all of the boards in these states are necessarily large.

County boards perform the functions which are entrusted to them by state law, which, of course, means that there is considerable variation from state to state. Moreover, some states differentiate among their own counties, giving some boards more extensive authority than others. In general, it may be stated that the county board has a little legislative authority, some executive power, and a considerable amount of administrative responsibility. It is the mainspring of the county government, providing in so far as possible for the financing and coordination of the other parts of county government. Aside from levying taxes, appropriating public funds, and incurring indebtedness, county boards do not ordinarily possess substantial legislative power and consequently are not known for the statutes or ordinances which they enact. In an executive capacity they have some appointing power and represent the only centralizing authority there is in the county. They may appoint the superintendent of the poor farm, the county road supervisor, the county health officer, the county purchasing agent, the county attorney, and other officials, being given the authority in some states to fill vacancies in elective offices in the county. In the more important counties there may be large numbers—running into the hundreds or even thousands—of employees in connection with roads, public works, and related county functions. In several cases, Los Angeles County in California for example, these positions are filled under the merit system, but in most counties the spoils system remains in full force. It is not uncommon for the members of the county board to divide the positions into shares, with each member or each member of the majority clique being given a free hand in disposing of his quota. Actually it is likely that the county chairman of the dominant political party will have a great deal to do with the filling of these jobs, though commissioners may get in their relatives and friends also. But the bulk of the business of the county board may be classified under the following headings: public works, purchasing, finance, elections, charities and corrections, and miscellaneous.

General Functions of County Boards

The county highways, institutions, and buildings are all usually directly or indirectly under the control of the county board. All of the public roads which are not included in the state highway system or located within city limits are sometimes considered county roads, though in some states the minor roads may be left to the care of townships. Thus in an average county there are likely

Public Works

to be several hundred miles of roads which fall within the control of the county board; some of these are paved highways which carry heavy traffic; other sections will be black-top or gravel which are intermediate in character; while a considerable portion is likely to be purely for local farm use and may be only moderately improved. In a well-organized county there will usually be a public works department or a county highway agency which will have direct charge of maintaining these roads, but in small counties it is not unknown for the members of the county board to divide up the mileage among themselves, each assuming responsibility for the care of his section. In this way it is possible for the members to add to their incomes and to reward their friends and supporters with at least a few days of work each year if not full-time jobs. Even where there are county highways departments the board members usually find it possible to have a decisive influence, since they choose the head of that department. Moreover, appropriations for new black-topping, road widening, snow plows, and other road supplies have to come from the county board. The courthouse, the jail, the poor farm, the county hospital, and other county properties usually are placed under the control of the county board, though in some places separate boards of trustees are provided to manage hospitals and certain other institutions. The county board names the custodian of the courthouse and even in many cases the janitors and elevator operators; it also decides when a new roof is needed, when decorating is to be done, and what additional equipment is required. In general, the same authority is exercised in connection with other county buildings.

The most progressive counties have established central purchasing agencies for the buying of supplies which are required for operating the poor farm, the highway department, the courthouse, and perhaps the county offices. However, in general, county boards watch the purchase of supplies with jealous eyes, regarding this task as one of their perquisites. Increasingly the states have limited the leeway of the county boards in making purchases by specifying that bids must be called for in sizable purchases and that contracts must be awarded to the lowest bidder. Therefore it is not so easy for board members to demand their rake-offs or to reward their friends and political followers as it once was, but there are still reasonably good opportunities, judging from the assiduous attention which some county boards, not known for their devotion to public interests, give these matters.

In addition to making the tax levy, drafting the budget, and authorizing the borrowing of money, county boards often perform rather routine functions of a financial character. Even in those cases where the salaries of the sheriff, treasurer, and other county officers are fixed by state law no money may actually be paid out until the county board has given its approval. In many counties a large amount of the time of the board is devoted to "allowing" claims against the county; thus every tiny bill for personal services, supplies, and telephone and electricity must be presented to the county board before it can be paid. Following the monthly meeting of the board a long list of items which have been "allowed" is printed in a local newspaper. County boards sometimes act as boards of equalization in those cases where assessing is handled by townships; again they hear appeals from taxpayers who feel that their property has been assessed at too high a figure. It may be added that some counties now have boards of tax review which relieve the county board of this task. In a few cases there is a second board, known as a "county council," provided to check the financial actions of the commissioners; thus general appropriations and emergency appropriations not included in the regular budget must have the approval of the county council before becoming effective.

There is a wide diversity of practice among the states in providing for election administration. The county clerk is frequently given large responsibilities in connection with printing ballots, while special boards of election commissioners may supervise elections in general. However, it is not at all uncommon for county boards to have at least some responsibility in this connection. They may have to make a contract for the printing of the ballots after the clerk has prepared the forms; they may appoint the election officials in the various precincts; they may divide the county up into precincts for voting purposes; they may decide where the polling places shall be for each precinct. Election supplies and the remuneration of the polling officials may have to be taken care of by the county board. After the ballots have been counted, it is sometimes provided that the ballot boxes shall be sealed up and sent to a central place designated by the county board, which, after a reasonable time has elapsed, orders the ballots destroyed. Election officers may send their official returns reporting on the distribution of the votes to the county board, which then tallies them and issues certificates of election to those who are

winners. Although contested elections may be carried into the courts, it is sometimes the duty of the county board to order recounts of ballots where there is a question as to who has been elected.

Prior to the great expansion of the public welfare programs county boards frequently had considerable responsibility in connection with the granting of relief as well as for providing for the support of poor farms, orphanages, old-folks' homes, and county jails. At present there is so much to do in this field that county departments of public welfare, often with sizable staffs, have been set up by state law to administer the program. However, county boards still have to appropriate the county's share of financing old-age assistance and poor relief and may have some oversight over the welfare departments, though the federal standards require merit appointments. In ten states which do not undertake to supervise local poor relief, county boards may still have to take up each case of need and authorize monthly or quarterly payments to those who seem entitled to assistance.

In addition to the items which have been discussed, county boards frequently have many other functions of more or less importance. Much depends upon the particular state and upon the legislation within a single state relating to certain counties; hence no general statement can be made. Among the miscellaneous duties which are encountered here and there are the following: licensing liquor dispensaries and hotels and restaurants which serve liquor, drafting lists of jurors, providing for bounties to those who kill coyotes, wolves, and other animals which prey upon livestock, reimbursing farmers whose sheep are killed by dogs, and incorporating benevolent societies.

OTHER COUNTY OFFICERS

The states do not agree as to how many county officers there shall be in addition to the members of the county board. In Rhode Island only a sheriff and a clerk are provided, while at the other extreme are metropolitan counties, such as Cook County in Illinois, which may have fifty or more officers, if one counts the judges of the courts. In general, counties have from half a dozen to a dozen or fifteen officers, most of whom are elected by the voters for two- or four-year terms. The elective character of most of these county officers promotes an independence which is one of the outstanding characteristics of county administration. The county board has some control through its power to

appropriate the necessary funds, but aside from that each officer feels that he is entitled to run his department about as he pleases as long as he meets the approval of the people. Thus one department may be operated on relatively high standards with employees selected on the basis of their training and efficiency, while others in the same county may represent the worst aspects of the spoils system.¹ In those few counties which have reorganized and placed a manager at the head of county administration, this situation does not, of course, exist. Considering the lack of supervision and centralization, it is perhaps surprising that counties get along as well as they do.

In certain urban counties the sheriff is about as useless a functionary as can be imagined, since the police departments perform most of the duties which are ordinarily handled by that officer and his deputies. After long agitation New York City in 1941 finally The Sheriff voted to abolish the five separate sheriff's offices in its counties and to create a single office which would attend to the little remaining to be done. However, in the numerous counties which are primarily rural in character—and in four out of five of all counties there is no settlement larger than ten thousand—the office of sheriff continues to be ranked first among all county officers. This is reflected in the number of candidates who throw their hats into the ring when an election is in the offing. To some extent it may be that the widespread interest in the office grows out of the salary and especially the fees which are often attached thereto—fees alone reach \$50,000 to \$100,000 annually in a number of counties; it is reported that there have been instances where the income legally allowed a sheriff ran to \$250,000 per year. Sheriffs receive a comparatively modest salary which usually runs from \$2,000 to \$10,000 per year and in addition they often are entitled to fees based on mileage covered for serving subpoenas, making arrests, and transporting persons to penal and insane institutions. A few cents per mile may not seem very large when viewed abstractly; yet in a busy county the aggregate amount involved during the course of a year will reach impressive sums. There has been a great deal said in favor of abolishing the fee system, but it is very difficult to dislodge it because of the opposition of those who profit directly or indirectly from it. Even where it has been thrown out, it somehow or other sometimes manages to get back.

¹ Counties employed 320,000 persons in 1941. See Bureau of the Census, *Public Employment in the United States: 1941*, p. 5.

Sheriffs ordinarily have two types of duties attached to their offices: police and court. They are theoretically responsible for maintaining law and order in their counties and in small rural counties may actually do a considerable amount of this work. They and their deputies conduct raids on stills, seize gambling apparatus and slot machines, and arrest those who are charged with committing murder, burglary, and other felonious crimes. They are responsible for keeping the county jail and frequently reside in the quarters attached to that institution; indeed their wives may do the cooking for the prisoners. In more populous counties there is less of this type of work to be performed, since cities and towns have their own police officers and constables and even their jails. In the metropolitan counties there may be little or no police work to be done by the office of sheriff, inasmuch as large police forces which are well equipped render the sheriff and his deputies supernumeraries. More time-consuming in most counties are the duties which are attached to the county, circuit, or intermediate state court based on county lines. In many instances the sheriff or his deputies are expected to be in attendance at all sessions of the court to open the court, keep order, and otherwise carry out the instructions of the judge. In criminal cases he or his representative is in charge of the accused during the trial, seeing that the latter is present at the time wanted and kept safely when court is not in session; after sentence has been imposed the sheriff is the agent of the court in delivering the prisoner to the designated penal institution. In both criminal and civil cases the sheriff's office has a good deal to do in serving subpoenas on witnesses both for the state or plaintiff and for the defense. In civil cases writs attaching property may have to be served; judgments may be executed by seizing and selling property at auction.

Attached to intermediate courts there are prosecuting, district, state's, or county attorneys whose jurisdiction usually covers a single county, though their titles may suggest some other arrangement. These officials are legally state officers and sometimes draw their salaries from state funds, but they are usually regarded by the people as county officers. In cooperation with the sheriff's office the prosecuting attorney is expected to enforce the laws relating to crime. He assists the police in investigating crimes, brings suspected persons to the attention of grand juries, goes before a judge and requests the holding of an accused person for trial upon the basis

**Duties of a
Sheriff's
Office**

**Prosecut-
ing At-
torney**

of information, and prepares the state's case against accused persons who are being given a judicial trial. The prosecutor may take the initiative against gamblers, bookmakers, slot-machine operators, and organized vice. He has a great deal to say as to whether charges will be pressed, since grand juries ordinarily follow his advice in returning indictments. If he does not regard an indictment as adequate, he may delay trial and even ask the judge to quash an indictment. Obviously the prosecutor has a great deal to do with the public morals and crime record of his county. If he is courageous and honest, it will be difficult for crime and commercial vice to flourish, since the risk is greater than the possible return in most cases. On the other hand, if he is derelict in his duty, content to let matters alone, or affiliated closely with a political machine, conditions will in all probability be bad. The underworld will know that it can operate safely, particularly if it makes proper arrangements with the right man in the prosecutors's office or with the political organization. Even the police cannot go far in making up for the lack in a prosecutor's office, for there is little to be gained making arrests unless the accused are brought to trial and prosecuted with reasonable vigor.

In rural counties the perquisites attached to the office—sometimes no more than \$100 per month—are such that experienced members of the bar are not interested in the position, with the result that a tradition grows up that young lawyers just starting out are elected. This sometimes handicaps successful control of the criminal element because the inexperienced prosecutor does not know how to proceed or fears to make powerful enemies. However, the crime problem is not sufficiently acute in many rural counties to make the situation serious. But in urban counties it is of the highest importance that an experienced, incorruptible, and courageous prosecuting attorney be elected. The achievements of Prosecutor Dewey in New York have been much publicized and are an indication of what can be done even under very difficult circumstances.

Counties may provide either a county clerk or a court clerk, or both. If there is a court clerk only, a recorder may be authorized to handle the recording of deeds, mortgages, and other routine items which in other counties receive the attention of a county clerk. Any intermediate court has many records which have to be kept. A docket is necessary so that the court may know what cases it has to give attention to; a transcript has to be made of what

County and
Court
Clerks

goes on in the formal sessions of the court. The various papers, exhibits, and affidavits which are submitted in connection with a case have to be kept in such form that the judge and the attorneys may have access to them. After the court has decided on the case, a record must be made of the exact judgment, decision, or decree which is made. In case an appeal is taken there must be records that can be transmitted to a higher court, while archives must be preserved so that reference may be made to a given case at some future time. The clerk of the court or the county clerk, as the case may be, cares for these tasks either in person or through deputies whom he appoints. In addition to the multiplicity of court records, there are many other records that even the most rural county finds it desirable to keep. The ownership of real property is recorded when deeds are filed; liens on such property become public knowledge when mortgages are recorded. Without such information it would be very difficult to carry on ordinary business. Vital statistics of several kinds are now regarded as essential; hence the clerk keeps records of births, deaths, and sometimes of serious cases of disease.

A decade ago one heard little about the county welfare department and indeed most counties did not have them. Now with the social security program in full swing the county welfare department is often one of the busiest and most important of the county agencies. It may be a single-head department or it may follow the board pattern, but in any case it has a director who manages the day-to-day conduct of business. Social workers are employed to investigate applications and to supervise the cases after they have been accepted for assistance. Stenographers and clerks are required to keep the case histories which are considered of fundamental importance. We have noted the far-reaching social security program of the national government in connection with our study of the federal administrative agencies.¹ In connection with state government the state's role in social security came in for attention.² Now in the county we finally come down to the office which directly administers much of the program. Old-age insurance is handled entirely by the federal authorities; unemployment insurance ordinarily does not require much attention from the county welfare department. But old-age assistance, aid to dependent children, programs intended to help crippled children,

¹ See Chap. 31.

² See Chap. 44.

pensions for the blind, and outdoor relief are entirely or in part supervised by the county welfare departments in most of the states. Inasmuch as the test of a program is in the service which it renders to its recipients, it must be apparent that the final basis for evaluating the social security system is to be found in the county welfare departments. If they are honeycombed with politics and grant relief or approve old-age assistance applications on the ground of political considerations, it is evident that the program is far from adequate. If well-meaning but untrained persons attempt to decide whether relief and assistance are required in specific cases, it is altogether probable that deserving cases may be refused and more spectacular ones which appeal to the eye but are actually less necessitous will receive attention. The federal insistence that certain standards be observed in that part of the social security program involving the use of federal funds has been very helpful in safeguarding these departments against the most vicious sapping.

In addition to the departments and offices which have been mentioned, counties frequently maintain a number of others, including coroners, assessors, surveyors, school superintendents, boards of tax review, election boards, overseers of the poor, and so forth. Some of these are filled by popular election, while others may be appointed by judges, township trustees, the county board, and other agencies. Most of these offices or departments are self-explanatory and in general are of secondary importance. The coroner, who in England once headed the county officials as the chief representative of the crown, has been shorn of his authority until the very office itself has been abandoned in some counties. Coroners now have little to do except view the bodies of those who have died in unusual circumstances, attempt to discover the cause of death, and bring those guilty of murder to the attention of the proper authorities. Most of them are untrained and can do little more than go through the routine motions which may actually serve to hinder the efforts of the police in tracking down the murderer. In order to improve this process some counties have substituted professionally trained medical examiners for coroners. County superintendents of schools sometimes have important functions in connection with rural schools, particularly in the South and West. However, in many counties their duties are largely routine and involve such matters as truancy. Surveyors check up on boundaries of land; assessors are responsible for the assessment of

Other
County De-
partments

general property either directly or indirectly through supervising the township assessors.

The lack of coordination and unified direction, so striking features of conventional county government, have caused some people to advocate a drastic reconstruction. In so far as this movement has developed beyond the paper stage it has usually involved the application of the council-manager plan to county government. In 1941 six counties had been reorganized and were operating with county managers.¹ The experience of these counties—Monroe in New York, Albemarle, Arlington, and Henrico in Virginia, Sacramento in California, and Durham in North Carolina—has not been sufficiently extensive to justify a detailed evaluation. In general, the few counties that use the plan seem to be quite pleased, though San Mateo County, California, has abandoned it. Nevertheless, vested interests are so firmly entrenched in most counties that it will require a great deal of effort to bring about any general employment of county managers.

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CHAPTER XLVII

THE GOVERNMENT OF CITIES

ALTHOUGH long primarily rural in character, the United States is at present one of the principal urban countries of the world. That is not to say that it is as a whole so highly urbanized as England and Belgium which have more than two-thirds of their inhabitants in cities, though the Middle Atlantic and New England states compare favorably even with these countries. But more than half of the people of the United States now reside in cities as defined by the Bureau of the Census; ¹ approximately 45 per cent live in 96 metropolitan areas; and the number of places of 2500 population or over exceeds 3000. Five cities in the United States have more than one million inhabitants, thus ranking with the population giants of the world, while an additional eight fall into the half million to a million class. Almost one hundred cities have populations of one hundred thousand or more.²

Despite the impressive number of cities, the United States has sections which are distinctly rural in character. The Middle Atlantic and New England states have more than three-fourths of their inhabitants living in cities, while the Pacific coast states and the East North Central states have something like two-thirds of their people residents of cities. The other sections are all more rural than urban; the East South Central states, including Kentucky, Tennessee, Alabama, and Mississippi, actually have hardly more than one-fourth of their people living in places as large as 2500. The variation among the states is also striking. Rhode Island and Massachusetts both exceed 90 per cent in urbanization, while New York and New Jersey can show more than 80 per cent. At the other extreme are North Dakota and Mississippi which have less than 20 per cent of their inhabitants gathered in cities.

In 1790 only 3.3 per cent of the population resided in cities of eight thousand or more inhabitants, there being only six places of that size

¹ The census definition includes all places of 2500 or over. In 1940 56.5 per cent of the population was reported as urban as against 56.2 per cent in 1930.

² Ninety-two in 1940.

altogether. Philadelphia, the largest city, had slightly over forty thousand people; New York City reported some thirty thousand; and Boston had less than twenty thousand. According to the census of 1940 more than half of the total population resided in places of eight thousand or over, and more than twelve hundred cities of this size were to be found. New York City in that year reported more than seven million people, while Chicago claimed well over three million. During the first 140 years of the republic urban population grew at a considerably faster rate than the population as a whole. Thus in the first decade ending in 1800 city growth amounted to 60.4 per cent, while the total population increase was 35.1 per cent; fifty years later the corresponding rates were 99.3 per cent and 35.9 per cent. During the decade preceding 1900 cities added 37.1 per cent and the country as a whole 20.7 per cent to their populations, thus indicating a narrowing of the gap between the two. However, as late as the decade ending in 1930, the rate of urban growth was almost twice that of the population as a whole.¹ For the first time in the history of the country cities reported approximately the same growth in the census of 1940 as the United States as a whole.² Indeed the larger cities hardly more than held their own, while Philadelphia, Boston, San Francisco, and a number of other places actually had to admit slight losses. Suburban cities which are satellites of large cities continued to show a healthy growth,³ thus indicating that metropolitan areas as distinct from large cities themselves held up well. Nevertheless, the period of rapid city growth seems to be passed and there is much speculation as to whether cities will be able to maintain their present numbers in the future, with the probability being that, barring revolutionary changes in the industrial system, cities will remain more or less at their present size.

As in the case of counties, cities are the legal creations of states. Hence their very existence in the first place as well as their governmental structures and powers depend upon the will of the states in which they are located. Inasmuch as the states see fit to lay down varying rules in regard to the essentials of city status, there is no such thing as a single type of American city. Illinois and

The Future of
Cities in
the United
States

Legal Basis
of Cities

¹ Cities increased by 30.2 per cent while the population as a whole expanded only by 16.1 per cent.

² The preliminary census figures showed a 7.2 per cent increase in general population and a 7.9 per cent increase in urban population.

³ Rural nonfarm population increased by 14.5 per cent between 1930 and 1940.

Nebraska, for example, stipulate only one thousand people as the minimum population a city must have; Ohio requires five times that number; while New York and Pennsylvania demand that every municipality have at least ten thousand inhabitants. Some states continue to make special provisions for the government of each city, but state constitutional provisions prohibiting special legislation cause other states to handle municipal affairs by general statutes. This means that in states where special legislation is permitted still—this includes New England and several southern states—the legal basis of any particular city is likely to be the charter which has been drafted for that city. On the other hand, in some states there are municipal codes or general statutes relating to cities, which, together with amendments added almost every time the legislature meets, constitute the legal foundation for all cities within those states.

The forty-eight states make various provisions for municipal charters, but in general there are the following types: (1) special, (2) general, (3) classified, (4) home-rule, and (5) optional. Where special legislation is permitted, individual cities may receive special consideration from the general assembly in the form of a charter drafted to meet the needs of that city. This system requires a considerable amount of time from the legislatures, often leads to favoritism and discrimination, and has been banned in many of the states, though in theory at least it has some advantages. Under the general charter system every city in a state is forced to operate under the same charter, irrespective of size or problems. This is a good deal like providing a single size of clothing for all people and does not fit into the political psychology of the United States. A much more popular type is known as the classified charter. Here the legislature divides cities up into three to seven or more classes, providing by general law for the government of cities which fall into a single class. The courts have permitted this even in those states which do not allow special legislation. Classified charters make it possible to adjust the form and powers of government to the needs of the city to some extent at least and at the same time rule out the discrimination which is so frequently associated with special charters.¹ Those states which permit home rule to cities authorize the people of the city to prepare their own charter, subject to the provisions of the constitution and laws of the state. No other type

¹ Quite frequently the largest city in a state is placed in a class by itself and this, of course, in reality permits special legislation for that city.

of charter fits into local needs as well as the home-rule, but it is increasingly difficult to draw the line between purely local functions and state functions, with the result that home-rule charters frequently occasion a great deal of litigation before they are settled.¹ The final type of charter is the newest and attempts to avoid the defects of the others, while at the same time conferring their advantages. Under this system general assemblies prepare several charters—usually including a strong-mayor and weak-council type, a weak-mayor and strong-council type, a council-manager type, a commission type, and a small-city type—which may be selected by any city. This permits some local choice, avoids legal ambiguity, and rules out discrimination, but it has been less popular than was predicted a few years ago.

Although cities are the legal creatures of states and consequently maintain most of their formal relations with states, they also have important dealings with the national government.² The social security program, W.P.A., C.C.C., N.Y.A., the United States Employment Service, and the Surplus Commodity Administration have all been of immediate concern to cities, assisting them in no small way in dealing with the problem of relief. The greater part of the public works which cities have constructed during the last decade has been financed in whole or in part by federal funds. The efforts of the United States Housing Administration have been directed at razing city slums and providing low-cost housing. The municipal bankruptcy legislation enacted by Congress has contributed to municipal solvency, while the work of the Federal Bureau of Investigation has gone far in keeping municipal crime under control.

The several states may vary widely in the qualifications laid down for cities and in the powers granted to municipalities, but most of them are not far apart in the matter of structure. There are three basic forms to be encountered more or less everywhere throughout the United States: (1) the mayor-council, (2) the council-manager, and (3) the commission. The mayor-council type of government may be further subdivided into two forms which

Relation of
Cities to
the Federal
Govern-
ment

Forms of
City Govern-
ment

¹ For an incisive discussion of home-rule charters, see J. D. McGoldrick, *The Law and Practice of Municipal Home Rule, 1916-1930*, Columbia University Press, New York, 1933.

² For a very good discussion of federal-city relations, see National Resources Committee, "Federal Relations to Urban Governments," *Urban Government*, 2 vols., Government Printing Office, Washington, 1939, Vol. I, part 2.

are different enough to deserve attention: (1) the strong-mayor and weak-council and (2) the weak-mayor and strong-council.¹

MAYOR-COUNCIL GOVERNMENT

The oldest and most prevalent form of city government in the United States provides for a mayor and a council. Despite the competition offered by the newer forms, more than one thousand out of the some eighteen hundred cities with populations of five thousand or over continue to use the mayor-council system. Under the English usage the mayor-council form made the mayor something of a figurehead and conferred the general authority over municipal affairs on the council. During colonial days cities in the new world followed this pattern, expecting the mayor to preside over the sessions of the council but otherwise giving him relatively little authority. But there has been such a far-reaching development in mayor-council government in the United States during the last century and a half that it now presents a sharp contrast to the English borough system. Everywhere the mayor has taken on great authority and the council has surrendered power, until in those cities where the movement has gone farthest the mayor now definitely overshadows the council. It should be reiterated that some cities have made their mayors much more powerful than others, with the result that it is customary to classify cities using this form as strong-mayor and weak-council types or weak-mayor and strong-council types.

Though mayors are elected by the council under the English mayor-council system, in the United States they are everywhere chosen by **The Office of Mayor** the voters. Terms run for either two or four years, with the trend being toward the longer term, though many cities continue to prefer the former. Reelection is permitted in most instances and is actually accorded in many cities if mayors are reasonably popular. Records of more than two terms are not customary, though Mayor Hoan of Milwaukee held office for more than twenty years and Jasper McLevy of Bridgeport, Connecticut, was elected to his fifth term in 1941. In small cities a salary of a few hundred dollars must satisfy anyone who holds the office, but in larger cities more generous remuneration is naturally forthcoming inasmuch as the office

¹ For a more detailed discussion of governmental structure in cities, see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, Chaps. 15-18.

calls for the full time of the incumbent. Salaries ranging from \$5,000 to \$10,000 are not uncommon in the largest cities, but anything over the latter figure is distinctly the exception. In a number of cities mayors are at least in theory selected on a nonpartisan basis, while in others the familiar Republican-Democratic labels or strictly local party affiliation is the rule. A few cities make use of preferential voting in electing a mayor, but the great majority find the ordinary plurality arrangement satisfactory.

The exact functions of a mayor vary from city to city, depending to some extent upon the size of the city and also upon whether the strong-mayor and weak-council or the weak-mayor and strong-council plans are in use. In small cities the mayor may spend an hour or so a day on public duties, devoting the remainder of the time to his private affairs. In such cases he confers with the police and fire chiefs and the superintendent of public works rather frequently, sits in the mayor's court in those states which provide such courts, and presides over the sessions of the city council once or twice each month. In large cities the mayor's duties are ordinarily more varied. He usually spends several hours each day in his office, going over papers, attending to correspondence, conferring with administrative officials and politicians, and receiving individual citizens and delegations. However, there are exceptions such as "Big Bill" Thompson of Chicago and Tom Johnson of Cleveland who either disliked offices or preferred to shut themselves away from public contact. Public occasions require a great deal of time from the mayor of a large city. Dedications, cornerstone layings, reception of distinguished visitors, attendance at dinners, receptions, and luncheons, welcoming conventions, and other similar affairs almost invariably constitute a heavy drain on the energies of a metropolitan executive.

Whether he presides over the sessions of the council or not, the mayor ordinarily keeps closely in touch with what is going on in that body. He sends in messages and recommendations which may or may not have decisive effect; in most cities he has some sort of a veto, though it is usually possible for the council to override his veto by a two-thirds or three-fourths vote. In many cities the mayor prepares the budget for submission to the council and in some places, such as Boston, he receives virtually complete financial control through a provision that the council may not add new items nor

**General
Functions
of the
Mayor**

**Specific
Powers**

increase already existing ones. Transfers of funds by departments from one purpose to another after the budget has been passed frequently require the approval of the mayor. In almost every case the mayor appoints the heads of the administrative departments in so far as they are not popularly elected, though the consent of the council may be specified. If there is no civil service machinery the mayor may have much to do with minor appointments; some mayors spend hours and hours interviewing candidates for minor positions in the police or fire department. In general, mayors also have the power to remove those whom they have appointed, though some charters limit this by stipulating that the council shall agree.

At the beginning of the century city councils followed the bicameral pattern which is familiar in Congress and the state legislatures. Not content with two houses, it was customary to make each chamber quite sizable, sometimes fifty or more. At the present time there are almost no bicameral city councils¹ left, while reasonable size is emphasized in the case of the unicameral chamber. In small cities it is not uncommon to find only five or six councilmen; in the very largest cities the number varies from approximately nine to fifty,² with very few exceeding twenty. The most popular system of selection for many years made the ward the basis and gave victory to the candidate who received the largest number of votes. The ward plan encouraged logrolling and undue interest in neighborhood problems at the expense of city-wide welfare; consequently there was a movement toward electing all of the councilmen at large. Certain cities have not been satisfied with election at large, claiming that some sections and interest groups are not represented at all under such a plan. Proportional representation³ has been adopted by New York City and several other cities in order to get away from purely partisan elections, while a number of cities find it desirable to elect some councilmen at large and others on the basis of districts or wards. Election at large may be accompanied by a requirement that the members be distributed among the various sections of a city. There is no unanimity of opinion as to which system is preferable, though a poll of experts in local government conducted by the Bureau

¹ It is sometimes stated that the council and board of estimate in New York City constitute a bicameral system, though this is denied by certain New York officials.

² Chicago still has a board of aldermen of fifty members.

³ See G. H. Hallett, Jr., *Proportional Representation, The Key to Democracy*, Proportional Representation League, New York, 1937, for additional discussion.

of Governmental Research of St. Louis in 1940 to guide in the reconstruction of the council of that city revealed that proportional representation had the largest support, election at large by ordinary methods the second position, and a combination of election at large and by wards the third place.

If the mayor is not authorized to preside over council meetings by the city charter, the members proceed to elect one of their number to that position. The city clerk may be available to keep minutes and records, or the council may employ its own clerk or clerks for this purpose if the city is sizable. Representatives of the police department usually furnish any oversight which is necessary to maintain law and order. In the case of small councils the committee system may have some place, but there is a tendency to conduct business on the floor with all of the members participating. However, if a council has fifteen or more members, committees are usually regarded as quite important, being entrusted with a great deal of the actual authority of the council. Meetings are held once or twice each month in the case of small cities and once each week in the larger municipalities. In the former evening sessions may be held, inasmuch as the councilmen have their private affairs to attend during working hours. In large cities, on the other hand, daytime sessions are the rule. Some visitors find council meetings exceedingly tedious, while others remark at the lively character of the proceedings. A great deal depends upon the city and the time. Ordinary sessions may be more or less cut-and-dried affairs with little more than routine business being transacted, but occasionally a controversial question of general interest will produce spirited debate. In New York City the council proceedings recently developed such impassioned debate and colorful behavior that the radio listeners decided that a vaudeville entertainment must be in progress. Criticism aimed at the council made the members sensitive to the point that they finally ejected the employees of the municipal broadcasting station sent to handle the transmission of the proceedings to the air.

City councils pass the ordinances or bylaws which regulate public health, safety, and morals within a city, but there is less scope for this type of action than in the nation or a state. Taxes must be levied, appropriations made, and debts authorized. In case no other provision is made, councils grant franchises to street railway, bus, electric, and other utility companies which desire to use the streets and alleys and other public property. Large contracts

Organization

**Functions
of City
Councils**

which provide for the construction of buildings, the paving of streets, and the acquiring of land frequently require the approval of the council. In so far as the charter permits, the council may provide for the organization of the administrative departments, fix salaries of municipal employees, authorize the merit plan in municipal employment, and handle other matters relating to the administrative side of city government. It may be added that there is wide variation in the authority which councils exercise in all of these spheres. A strong council may take the leadership in city government and be very active in all of these fields, while a weak council may do little more than go through the motions of rubber stamping appropriations, approving contracts and franchises, and assenting to other proposals made by the mayor.¹

THE COUNCIL-MANAGER PLAN

More than twenty-five years ago there came into operation a plan of city government which is now used by approximately five hundred cities scattered throughout most of the forty-eight states.² Some eleven million people now reside in cities which have council-manager government and this form has now become second only to the mayor-council system in popularity. It is probable that on the basis of publicity and widespread discussion council-manager government now occupies first place among all forms of city government in the United States.

As we have noted above, the mayor-council type of government embodies the conventional theories of government which characterize the United States; there are the familiar branches and these are separated from each other. The council-manager system resembles the organization which is to be encountered in private business corporations and emphasizes an intimate relationship between the executive and legislative branches. Policies are determined by the council and put into effect

**Funda-
mental
Difference
between
This and
Other
Forms**

¹ For additional discussion of the division of power between the council and the mayor, see C. G. Shenton, *Executives and Legislative Bodies of American Cities*, University of Pennsylvania Press, Philadelphia, 1937.

² Thirty-eight states have one or more council-manager cities. The South, the Pacific coast, and the Middle West have given the most support to the movement. Michigan, Florida, Texas, Virginia, California, and Oklahoma top the list, with more than thirty adoptions each. See International City Managers' Association, *Recent Council-Manager Developments and Directory of Council-Manager Cities*, International City Managers' Association, Chicago, 1941. On April 1, 1941, 458 cities over 1000, 9 cities of under 1000 population, and 19 towns in Connecticut, Maine, and Vermont operated under this plan of government.

by the manager, who is appointed by and responsible to the council. Instead of having independent administrative departments which may lack coordination¹ and owe responsibility to voters, mayors, councils, courts, and even state governments, the council-manager plan brings all of these under the manager. Closely associated with although not restricted to this form of government are the twin principles of a public personnel recruited on a merit basis and expert direction of the municipal services by professionally trained persons.

Council-manager cities usually have mayors, but one should not be misled by the title into assuming that these officials correspond to mayors under the mayor-council form. It is convenient to **The Mayor** have someone to represent the city on formal occasions; moreover, many people feel a sense of loss if there is no official bearing the title of mayor. Mayors under the council-manager system are frequently chosen by the council, though in some cases it is provided that the councilman who polls the largest number of votes shall receive this honor. At any rate they are members of the council, preside over sessions of the council, and exert more or less influence on council proceedings, but they do not have appointing power nor can they veto acts of the council. Their responsibility for supervising administrative activities is, of course, slight, since the manager assumes that task.

There is some tendency to confuse the council under the council-manager form with the council under the mayor-council plan. Superficially they are similar, but in reality their roles are not **The Council** always the same. The former council ordinarily has from five to nine members, who are chosen by proportional representation² or plurality voting for terms of two or four years. The organization is more or less similar to that encountered under the mayor-council type: clerks are employed to keep minutes and preserve records; police officers maintain order; and a presiding officer, usually the mayor, performs the usual duties associated with that position. Committees may be made use of on special occasions, but there are seldom the standing committees which feature certain councils under the mayor-council system. Meetings are held once or twice each month in smaller cities and once each week in larger ones. The council passes ordinances,

¹ Even under the mayor-council form there may, of course, be coordination. The mayor of New York City, for example, has far-reaching authority over the administrative departments.

² Cincinnati, Hamilton, and Toledo use proportional representation to elect their councilmen, but most council-manager cities use the ordinary plurality system.

appropriates money, levies taxes, and authorizes loans. This far it does about what is expected of an ordinary council. But in addition, it has to choose a manager, lay out policies which he is to follow in operating the administrative departments, receive reports from him as to the conduct of municipal affairs, and decide when his services are no longer such that he can be retained as city manager. The council is not supposed to interfere with the detailed operation of the administrative agencies; nor is it proper for it to dictate the appointment of administrative heads or of minor officials. It may be added that in practice it is frequently very difficult for the council members to resist such temptations and that this constitutes one of the most serious problems under this form of government.

One of the first questions which arises when a manager is to be chosen is whether a local man is to be taken or whether the position will be thrown open to outsiders. During the early years of the system it was commonplace to employ managers from without a city, though slightly more than half of the thousand appointed up to 1926 were home-town products. As the great depression hit the country, the pressure to take a local man became almost irresistible—in 1933 less than one appointment out of five involved an out-of-town person. The situation has become less tense since that time, with approximately one-third of the new appointments going to nonresidents, but even so local men have a distinct advantage. From the standpoint of local psychology there is perhaps something to be said in favor of naming a townsman, for this serves notice on the world that home-town talent is equal to any and all demands; moreover, the money paid out as salary is devoted to the encouragement of those in the community who need jobs. However, from the standpoint of effective operation of the council-manager form this practice is ordinarily a questionable one. In most instances it is not probable that there will be a local man who has the background which is desirable. Furthermore, a home-town product will have his local likes and dislikes, his social ties, and a rather definite point of view relating to local matters, thus making it difficult for him to do all that is expected of a manager. Finally, if there is to be a profession of city manager, it is essential that there be opportunities to move from one city to another as manager.

Some councils give much attention to the choice of a manager, setting up special committees for that purpose, inviting applications from

**Local
versus Pro-
fessional
Manager**

managers in other cities who are interested, studying the qualifications of the various available candidates, and holding personal interviews with those who are regarded as most promising. On the other hand, there are unfortunately councils which treat the matter as of little importance and more or less blindly take the person who strikes their fancy at the moment. Obviously, the selection process is very important, since it determines in large measure the caliber of the man selected to fill the position. Inasmuch as the success or failure of the manager-council plan depends primarily upon the strength of the manager, it is, of course, of the highest importance that the best possible person be taken.¹

Clarence E. Ridley and Orin F. Nolting of the International City Managers' Association place as number one requirement of a city manager "executive or administrative ability as shown by experience in handling men and interest in them, by dynamic personality, and by scientific bent of mind." They add that the manager should have a "constructive conception of the destiny of the American city . . . and a broad social conception of municipal government as a result of training, experience, and reflection."² A study of those holding positions as managers in 1933 revealed that about 20 per cent had been recruited from private engineering and approximately 25 per cent from various professions and businesses. About half of the managers at that time had come to their jobs directly from the public service, where they had held posts as city or county engineers, city clerks, financial officers, mayors, or members of a city council.³ In the early days of the use of this plan emphasis was placed upon the physical aspects of city government—streets, public buildings, sanitary facilities, and so forth and consequently it was natural that professional engineers be taken as managers. More recently it has been apparent that other aspects needed more careful attention. This is reflected in the statements made by a majority of managers in cities of over fifty thousand to the effect that education in public administration with experience in municipal work is highly important.⁴

Back-
ground of
City
Managers

¹ The International City Managers' Association has prepared a pamphlet entitled *The Selection of a City Manager*, which is sent to each member of a council in those cities which are in the process of choosing a new manager. This offers many valuable suggestions as to how to proceed.

² See their *City Manager Profession*, International City Managers' Association, Chicago, 1934, p. 41.

³ See *ibid.*, pp. 83-87.

⁴ See *ibid.*, p. 43.

In general, the city manager is expected to oversee the administrative side of municipal government, much as the manager or director of a business concern handles the day-to-day operation of his company. He has oversight extending to every phase of municipal activity; he appoints the heads of the administrative agencies; he coordinates the efforts of the various departments. Broad policies must be formulated by the council, but the manager may make recommendations to the council and indeed ordinarily participates in the discussion of such matters by the council, though he, of course, has no vote. The manager reports to the council on the operation of the administrative departments and is generally responsible to the council for the efficient record of these departments. The manager ordinarily prepares the municipal budget for the approval of the council and after it has been passed supervises its execution.

The proponents of the council-manager form have frequently stated that the manager should not attempt to furnish leadership in municipal affairs, since that is likely to be resented by the council and in any case belongs more to the policy-determining rather than to the administrative side of city government. The International City Managers' Association goes so far as to warn managers against the temptation of assuming leadership in civic affairs.¹ However, studies carried on under the auspices of the Committee on Public Administration of the Social Science Research Council of the actual operation of the council-manager plan in a substantial number of cities revealed that the successful managers do usually assume a considerable responsibility for leadership.² Indeed the evidence collected by those who made these studies leads to the general conclusion that irrespective of the theory a manager must furnish leadership in municipal affairs. The people who reside in cities have the general American yearning for personalized politics and under the council-manager form the manager is the logical person to undertake leadership.

After more than thirty years of experience it is evident that the council-manager form has a substantial contribution to make. It does not bring about miracles; indeed, the experiences of Kansas City and Cleveland have indicated that political bosses may continue to dominate under this system.

**Record of
the Council-
manager Form**

¹ See *ibid.*, p. 30.

² See H. A. Stone and others, *City Manager Government in Nine Cities*, Public Administration Service, Chicago, 1940; and F. C. Mosher and others, *City Manager Government in Seven Cities*, Public Administration Service, Chicago, 1940.

Nevertheless, this form encourages progressive city government and at a cost which is ordinarily no higher than distinctly mediocre cities pay. Only twenty-eight cities had abandoned this plan during thirty-two years of use.¹

THE COMMISSION FORM OF CITY GOVERNMENT

In the year 1900 the city of Galveston, Texas, was laid waste by a tidal wave which rushed in from the Gulf of Mexico. Galveston had piled up a floating indebtedness of some \$3,000,000 in the decade preceding this disaster and its government was condemned for its corruptness; it was evident that drastic steps would have to be taken to meet the emergency. The legislature of Texas authorized a commission of five business men to take over municipal affairs from the mayor and council and to displace these conventional agencies in running the city. Under this system Galveston rebuilt itself into a finer city than it had been before; municipal affairs were conducted with an efficiency that had been unknown under the mayor-council form of government; and despite the heavy cost of reconstruction the finances of the city were put on a basis that contrasted notably with the shaky system prior to 1900. In short, Galveston discovered that it enjoyed such government as it had never experienced before and indeed had hardly dreamed of; therefore it applied to the legislature for permission to retain the commission system permanently. Other cities in Texas wanted the same privilege and before long the movement had spread to other states. By 1912 more than two hundred cities had adopted the plan and in 1917, when the movement reached its peak, approximately five hundred cities in the United States operated under the commission government. The spread of the council-manager plan has occasioned some loss in the commission ranks, while other commission cities have become disillusioned and drifted back to mayor-council government. At present all of the states with four or five exceptions make some provision for the commission form of city government, but only about 250 cities over 5,000 in population use this system.²

The commission form, like the council-manager plan, departs from the conventional political pattern which has long characterized the

¹ This was up to April 1, 1941. See *Recent Council-Manager Developments*, International City Managers' Association, Chicago, 1941, p. 6.

² For more extended discussion of the spread of the commission form, see William B. Munro, *The Government of American Cities*, The Macmillan Company, New York, 1926, pp. 307-309.

United States. Instead of the executive and legislative branches being separate and entrusted with different authority, the commission plan consolidates these branches into a single agency, giving to that body both executive and legislative authority. The commission plan also expects the single agency to handle the administrative side of city government and on that point differs fundamentally from the council-manager type, which provides a city manager for that purpose. Commission government is supposedly the embodiment of business principles, but actually it differs from private business organization quite markedly in that it provides no director or manager to correspond to the single executive in a business corporation.

The very heart of this form of government is a commission which is ordinarily made up of from three to seven members. These are elected by the voters for terms of two or four years and except in very small cities are expected to give their full time to public affairs. One of their number is frequently designated mayor, though the title is usually more or less of an empty one.¹ The commission holds public sessions once or twice a month, frequently in the evening so that the citizens may attend in numbers. One commissioner ordinarily presides; a clerk is provided to keep minutes and records; but there is little of the elaborate organization which characterizes large city councils. The proceedings are naturally quite informal, since it is difficult for three or five men to put on much of a formal display.

The commission exercises executive, legislative, and administrative functions. As a group the commissioners adopt policies, levy taxes, appropriate money, approve borrowing, and pass ordinances; they also draft a budget, make appointments, order removals, and assume the functions usually entrusted to a mayor in so far as a group can do this. As individuals the commissioners have charge of the various departments into which the city is divided for administrative purposes. Thus one assumes responsibility for the fire and police departments; another heads the finance department; while a third takes over the public works of the city.

The lack of a single executive is a serious handicap under the com-

¹ Mayors under the commission form sometimes are more than figureheads. For example, Mayor Behrman had a great deal to say about public affairs in the city of New Orleans.

mission form, since it usually means that there is no unified direction of the day-to-day operation of a city government. The size of the commission is frequently too small to afford adequate representation to the various major interest groups or geographical areas of a city, with the result that policies may not be wisely decided. Commission government ordinarily has meant amateur administration because the commissioners who rarely possess expert knowledge themselves actually attempt to direct the work of the departments. The merit system of appointment and centralized purchasing have not fared well at the hands of most commissions, though in theory this form emphasizes progressive practices. But what happens in all too many cases is that each commissioner wants a free hand in filling the jobs and making the purchases in his department, with the result that friends, relatives, and political supporters get the favors. Then, too, there seems to be a tendency for the commissioners to divide into two cliques which means that three of the commissioners, if there are five altogether, decide what shall be done, irrespective of the desires of the two minority members. The outbreaks and stormy scenes which have been staged by the commissioners in such cities as Camden, New Jersey, have become almost scandalous. There are instances where the commission plan has worked out well over a period of years, but in most cases the people lose interest and grow cold after a few years, with the result that inefficiency and even corruption return to rear their ugly heads. All in all, it is quite improbable that the commission plan can regain the ground which it has lost, and it is even possible that it may eventually disappear from the scene entirely.¹

**Weak-
nesses in
the Com-
mission
Form**

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¹ For a more extensive discussion of the weaknesses of this form, see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, pp. 311-314.

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CHAPTER XLVIII

MUNICIPAL ADMINISTRATION

THE municipalities in the United States give employment to large numbers of persons¹—indeed a single city, such as New York with approximately 140,000 on its pay roll, overshadows even the largest state. They have to raise something like \$3,000,000,000 in revenues every year, which is, of course, no mean task in itself. They draft budgets which provide for the expenditure of about \$3,000,000,000 and have gross indebtedness which exceeds \$8,000,000,000. Of course, there are numerous records which have to be kept. The more progressive cities maintain planning commissions which are charged with various problems, often of considerable magnitude.² In addition to all of these staff functions, cities carry on numerous activities intended to meet the needs of their inhabitants and it is in this field that the relationship of cities to the people is especially intimate. The average man may have only a vague notion of what is done by the Department of State in Washington or the department of commerce and labor in his state government, but he can hardly escape some knowledge of the activities of his city in maintaining streets, providing parks, and furnishing a water supply. It is impossible to devote adequate space to these highly important activities here—that belongs to courses in municipal government—but a few generalizations may be made.

PUBLIC WORKS

Perhaps the most apparent activity of a city relates to public works, since the physical appearance of a municipality depends in large measure upon what is done in this sphere. A study of twenty-five representative cities several years ago revealed fifty-six functions which are

¹ On January 1, 1941, cities employed 922,000 persons at a cost of \$107,160,000 per month, exclusive of teachers. See Division of State and Local Government, Bureau of the Census, *Public Employment in the United States: 1941*, Government Printing Office, Washington, p. 5.

² For a detailed discussion of these, see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939.

performed by public works departments;¹ twenty of these functions are to be observed in a majority of the cities. Here are such activities as street design, improvement, and maintenance; street cleaning; sidewalks; street lighting; street-name signs; house numbering; bridge design, construction, and maintenance; sewer design, construction, and maintenance; sewage disposal; refuse collection and disposal; maintenance of all city-owned motor equipment; and inspection and construction of public buildings.

Most of the streets in cities have been laid out in a somewhat hit or miss fashion by amateurs, frequently by land promoters. New town-
Street sites have been surveyed by those who hoped that railroads
Design would be built as connecting links with the outside world or that industry would attract inhabitants. Land situated on the outskirts of existing cities has been subdivided into building lots in order to make a profit for realtors or owners and incidentally to furnish residences for city dwellers. A great many of these townsites and additions failed to attract settlers in large numbers and have either been entirely abandoned or exist as marginal communities, often of a very dreary character. Others have been more successful and now give residence and sustenance to thousands and even millions of people. But with few exceptions the men who laid out the streets did it in the quickest, easiest, and most economical fashion, eager to get rich by selling their lots to prospective buyers.

It happened that the simplest and cheapest method of street design was the checkerboard, gridiron, or rectangular layout, where the
The Grid- streets crisscrossed at right angles running North and South
iron Plan and East and West. Hence most of the cities in the United States follow this pattern, which many foreign observers regard as uninteresting, complaining that with few exceptions cities in the United States lack individuality.

In a few cases those who were responsible for designing the streets had more imagination. Major L'Enfant was employed to prepare a
The Radial street layout for Washington and he, having in mind the
Plan reconstruction of Paris, decided to base his plan on great diagonal avenues radiating from the Capitol. His plan was not followed entirely, with the result that the present city of Washington combines the radial street layout with the more conventional gridiron

¹ C. E. Ridley, *The Public Works Department in American Cities*, Institute of Public Administration, New York, 1929, p. 31.

plan. In order to reduce distance from one corner of the city to another, several municipalities have superimposed radial streets on their grid-iron layout, but this is about as far as the radial plan has been adopted in the United States.

In numerous cities the newer residential sections are laid out irregularly. Perhaps the streets follow the contours of the land, thus running along hill tops or in valleys; at times they follow the course of a stream. No attention is paid to straightness; indeed the emphasis is placed on avoiding regularity as far as possible. In a few garden cities superblocks with cul-de-sac streets have been laid out in order to obviate the noise and menace of through traffic and to permit houses to front on open spaces of a parklike character rather than on streets.¹

Other
Street
Plans

Except possibly in a small garden city, it is not probable that any single street plan will be desirable. In the downtown areas which are given over to business there is much to be said for the grid-iron layout; through highways which carry heavy traffic may be of the diagonal type; while residential sections may find it desirable to use a plan which capitalizes on the natural beauties and permits architects to use their talent in planning unusual houses.

No Single
Street Lay-
out Perfect

One of the chief defects in many streets grows out of the fact that their width is not related to their use. Thus some streets are so narrow that it is dangerous to drive along them and indeed parking cannot be permitted on one or both sides. Other streets may be wide enough for local traffic, but they are not adequate to carry the heavy stream of cars which seeks to use them. At the other extreme there are streets in residential districts which are fifty or more feet wide, though they carry very little traffic. When present streets were laid out, horse vehicles were still in use and the amount of traffic was far less than at present. This, of course, accounts for the inadequacy of many streets, though it must be added that some streets were never planned with any idea of what use would be made of them. Unfortunately streets once designed cannot easily be redesigned and hence it is necessary to get along with narrow streets. However, in new additions or in reconstructing old areas it is exceedingly important that street widths be based on a careful study of the probable use that will be made of them. A purely residential street should make

Importance
of Use

¹ For plates showing the several types of street layouts used in cities of the United States, see Harold Zink, *op. cit.*, pp. 568-569, 571.

allowance for parallel parking on both sides and two traffic lanes and therefore will be thirty-six feet wide—eight feet for each parking area and ten feet for each traffic lane. Anything less will make the street dangerous; additional width will ordinarily serve no useful purpose but will add considerably to the cost of paving and upkeep. Downtown streets may be laid out on the same basis, except that additional traffic lanes will be essential and it may be necessary to allow for streetcar tracks.¹

Though in the old days people expected to suffer muddy streets in wet weather and dust in dry weather, today it is regarded as necessary for cities to surface many and in some cases virtually all of their streets. Main streets are hard-surfaced even in very small cities, while residents of metropolitan centers and more progressive small cities look with critical eye on any street that is not given some protection against the elements. Several different types of surfacing are in current use and others have been tried in the past. Some years ago both brick and wood-block pavements were regarded with pride in many cities and it is not particularly uncommon to encounter these types of surfacing even now. However, no new wood-block pavements have been laid for several years and old ones are being replaced by other varieties of surfacing. Brick has more supporters, but it, too, is not highly regarded by most of those who are responsible for authorizing new paving. Concrete and asphalt stand at the top as far as permanent surfacing goes, though both are expensive and require adequate foundations. Granite block occasionally may be specified for streets in sections around docks or wholesale concerns where traffic is destructive of anything else. Various types of macadam, black-top, and heavy oil surfacing are popular for residential streets where little traffic has to be provided for and comparatively little money is available for improvements. These require less costly bases and materials can be laid rapidly; they have the disadvantage of rapid deterioration, with consequent necessity of frequent repairs. Pavements should be smooth, easy to clean, and durable; they should not occasion too much noise under use or be slippery when wet. Thus far no surfacing material has been found which meets all of these specifications and at the same time is cheap; concrete and asphalt are perhaps the most satisfactory if cost is not an important factor.

¹ On street layouts, see Thomas Adams, *The Design of Residential Areas*, Harvard University Press, Cambridge, 1934.

Almost all cities, irrespective of size, make some effort to light their streets at night. Until the middle of the nineteenth century such lighting as cities had was ordinarily furnished by oil lamps; **Street Lighting** that gave way to gas lighting; and gas in turn has largely surrendered to electric illumination. Two general systems of lighting are in common use: standard and suspension. The former requires a metallic or concrete standard, a frosted globe, and a high-candle-power bulb and usually is based on both sides of the street. This system is expensive to install and consumes more electric current than the suspension type, but it is superior from an aesthetic standpoint. Suspended lights are widely used for the illumination of residential and industrial districts and may be affixed to a bracket attached to a single pole or hung between poles on different sides of the street. Carbon arcs at one time had more or less of a monopoly, but they have given way in many instances to powerful incandescent bulbs of the mazda type. Being high over head these lights illuminate a considerable stretch of street and sidewalk. The primary purposes of street lighting are to (1) guide pedestrians, (2) discourage crime, and (3) enable motorists to drive safely. At present the last is ordinarily rated as the most important, though the glare produced by many municipal lights might not suggest that. Experiments have indicated that approximately half of the traffic accidents taking place on city streets at night can be avoided if lighting is adequate.¹

Progressive cities have recently given attention to the placing of street-name signs along their streets, though signs of one kind and another have been used for many years. But the ordinary **Street-name Signs** street-name sign has been more or less illegible at any distance to begin with; moreover, it has been so located that strangers have often found it difficult to discover. Some cities have set up special standards; others have attached signs to utility poles or lamp standards; sides of buildings have been made use of; names have been painted on the curbing at street intersections; while occasionally street names have been etched in the concrete of sidewalks. In all too many instances motorists have found it impossible even during daylight hours to read signs without stopping their cars and getting out to investigate; at night the difficulties have been intensified. By standardizing the location of signs, studying the importance of height above

¹ See R. E. Simpson, "46 Per Cent Fewer Accidents on Hartford's Relighted Streets," *American City*, Vol. LIII, p. 55, October, 1938.

the street, experimenting with legibility, and utilizing street lights, several cities have accomplished worth-while results in making their streets less confusing.

Closely related to the problem of street-name signs is that of house numbering. If strangers are driving along a street which is regularly **House** numbered, it is possible to count intersections and thus **Numbering** arrive approximately at the address desired. Those cities which ignore cross streets and go right on through the hundreds until all numbers are exhausted, not even making allowance for schools, parks, and other property not requiring numbers, are usually very difficult places to get about. Individual numbers are ordinarily affixed to houses and buildings themselves, but the general practice is regulated by ordinance or rule drafted by the department of public works. In many cities there is no common plan of locating these numbers, with the result that one may have to explore transoms, pillars, steps, curbing, and other parts of property before finding the number even during daylight hours. At night only those who delight in weird searches are likely to find any satisfaction in attempting to locate a house in a strange city, unless one of the new reflecting type of number plates is perchance set up near the street.

Sewage is by all odds the most dangerous waste product of a modern city; if it is not properly disposed of and contaminates the water supply it can cause a great deal of trouble. For many years **Sewage** **Disposal** cities did not realize the connection between good health and sewage disposal and consequently got rid of their sewage as easily as possible, usually emptying it into some near-by body of water. Where the quantity of water was large and the amount of sewage not too great, this method worked out reasonably well, for sunlight and air effected the purification of the contaminated water. But in many instances, as cities increased in size and added to their plumbing facilities, the quantity of sewage became so vast that no available body of water could be relied upon to protect against a menace. Some large cities finally reached the point where they were literally located in the midst of gigantic sewers. The situation became so serious that many cities, either of their own volition or because they were ordered by boards of health or the courts, constructed sewage-disposal plants. The techniques employed by these plants vary widely and pertain to sanitary engineering rather than to government; sedimentation, aeration, and chemical treatment are among the methods encountered.

No categorical statement can be made as to what type of sewage disposal plant should be used by cities, since a great deal depends upon the individual city. In other words, a system of sewage treatment that may be adequate for one city might be entirely out of the question for another because of the nature of the sewage, the quantities involved, and the location of a city in relation to large bodies of water and other cities.¹

In addition to sewage, cities produce large amounts of other waste products, of which the most important is probably garbage. Garbage is composed mainly of organic matter from kitchens, hotels, and food-manufacturing establishments; during hot weather it decomposes rapidly and causes distinct unpleasantness unless promptly disposed of. Small cities sometimes expect householders to bury, burn, or otherwise make provision for their accumulated garbage, but sizable cities ordinarily either collect this waste themselves or enter into a contract with a private collector for this service. The most common method of getting rid of garbage, if private collections are taken into account, involves the feeding of hogs. Such a method is open to serious question, since the United States Public Health Service has discovered that garbage-fed pork is a major source of trichinosis. Cities frequently use garbage to fill in low land, though this waste does not make a very satisfactory filler if any buildings are contemplated at a later date. Seaboard cities have resorted to dumping their garbage in the sea, but this occasions embarrassment when the tides carry the refuse back to shore and beaches become glorified garbage dumps. The large cities are increasingly depending upon garbage-disposal plants either of the reduction or incineration type. Reduction plants are not being built at present because they are costly to begin with, produce unpleasant odors, and seldom reclaim enough grease and low-grade fertilizer to pay expenses. Incinerators are less expensive to build and can be constructed in several localities so as to reduce the haul. Incinerating plants do not pretend to make a profit, but they dispose of garbage in a more sanitary method and largely eliminate the objectionable odors incident to reduction plants. Low-temperature incinerators apply the principles of ordinary combustion, while the more efficient high-temperature plants achieve a temperature of 1200 degrees Fahrenheit,

Collection
of Garbage

¹ For additional information relating to sewage disposal, see Leonard Metcalf and H. P. Eddy, *American Sewerage in Practice*, McGraw-Hill Book Company, Inc., New York, 1936.

require less fuel, less labor, and less space and completely consume the garbage.

Ashes make a reasonably satisfactory material for filling and may be advantageously used by cities to fill marshes, swamps, and shallow lake **Ashes and Rubbish** and ocean areas. Both New York City and Chicago have reclaimed by this method hundreds of acres of waterfront land, which has been used for parks, boulevards, beaches, and other public purposes. Rubbish may also be used to fill in waste land, but it does not prove too satisfactory for this purpose. Small cities frequently make no effort to collect either ashes or rubbish, depending upon their householders to hire these wastes hauled away. However, larger cities take their responsibilities more seriously and follow a variety of courses in disposing of rubbish. Municipal dumps may be maintained for the accommodation of that part of rubbish which cannot be salvaged; incinerators may be constructed to receive the rubbish, though metals and glass do not receive very effective treatment by means of combustion.¹

PUBLIC UTILITIES

Almost all cities make an effort to provide water for their citizens from a central system, unless a private company has taken over such a service. During the last decade there has been a substantial increase in the number of municipal water works, perhaps primarily because of the assistance extended by P.W.A. **Public versus Private Ownership of Water Systems** Dr. L. D. Upson goes so far as to declare that "public ownership is almost taken for granted in the field of water supply."² A study made by the National Resources Committee a few years ago revealed that some 7,800 out of 10,800 water systems are public-ownership projects, that all cities over half a million in population own their water works, and that approximately 84 per cent of cities over thirty thousand prefer public ownership of water facilities to private ownership.³ On the whole, cities have found it possible to furnish water at a lower cost to the consumer than private companies. Inasmuch as an adequate supply of cheap water is a most important asset and has an

¹ An up-to-date source of additional information relating to municipal public works is D. C. Stone, *The Management of Municipal Public Works*, Public Administration Service, Chicago, 1939.

² L. D. Upson, *The Practice of Municipal Administration*, D. Appleton-Century Company, Inc., New York, 1926, p. 505.

³ National Resources Committee, *Our Cities—Their Role in the National Economy*, Government Printing Office, Washington, 1937, p. 48.

intimate bearing on superior health, comfort, and general attractiveness, the mere matter of cost alone points in the direction of public ownership.

The amount of water required per capita in cities of the United States is far beyond the expectation of the average citizen. Water consumption in the cities of certain backward countries may run to only a few gallons per day, particularly where aridity makes a large supply difficult. In the United States there is a variation from city to city, but in general our consumption is the highest in the world and usually runs from one hundred to two hundred gallons per person per day. Of course, domestic consumption does not begin to account for this generous use, though the modern plumbing facilities commonplace in large numbers of dwellings do require considerable quantities of water. A good deal of water is undoubtedly wasted because many people have the notion that water is furnished by nature in inexhaustible amounts and without charge. In some cities it is estimated that as much as half of all water pumped is wasted—the amount of water allowed to run down the drain pipes to prevent freezing during a cold night in the winter in a northern city may actually exceed the rate of consumption during the day when people are using water for more legitimate purposes. Industrial users account for large amounts of water in many cities; the fire department, public buildings, the street department, and parks require fairly large amounts of water, though fire departments use less than is commonly supposed—perhaps 2 per cent or thereabouts. During recent years air-cooling systems, which have been installed in large numbers, have presented a serious problem in connection with the water supply, since they must have vast quantities and even if they do not depend upon the municipal water works often drain the subsurface to such a point that the city supply is threatened.

Cities get their water supply from a variety of sources, including wells, lakes and rivers, and watersheds. Many small cities and some large ones depend upon driven wells for all or part of their water supply. The cities located on the Great Lakes frequently draw their water from these great reservoirs, while cities along such rivers as the Mississippi and Ohio often depend upon river water, though it is ordinarily more or less polluted. A few cities, Denver for example, are fortunately situated near mountain streams which furnish them with supplies of clear, cool, and reasonably pure water. In a num-

The Problem of Quantity

Water Sources

ber of cases no rivers or lakes are available and wells cannot be expected to produce adequate quantities of water; so it is necessary to acquire large areas of uninhabited land for the collection of surface water. New York City, Boston, Baltimore, and Portland, Oregon are among the large cities that rely on watersheds. In order to make use of such a plan land must be obtained where the rainfall is reasonably heavy, dams and reservoirs must be constructed to collect the water and hold it until needed; and sanitary policing must be provided to prevent undue contamination.

Except in the case of some deep-well water, very little untreated water available to a city possesses the qualities which good water should have: relative freedom from bacterial contamination, clarity, reasonable softness, and absence of unpleasant taste and odor. Consequently most cities have to treat their water supply before it can be distributed to the domestic and industrial users. Where hardness is a problem, lime and sodium carbonate are sometimes used to precipitate some of the objectionable matter; suspended particles of earth and sand can usually be removed to some degree at least by simple sedimentation. Iron and manganese, which cause discoloration and offensive taste, may be reduced by aerating water, but no practical method has thus far been worked out for handling salt water. The most serious problem of treating water involves the removal of bacterial and organic contamination. Aeration is employed to reduce organic contamination and has some beneficial effect upon bacterial content. A simple method of dealing with bacterial pollution calls for the addition of liquid chlorine or a chemical which when added to water produces chlorine, but this cannot be depended upon alone if the bacterial content is high. In those places where the raw water is far from satisfactory, cities frequently have relied upon filtration, constructing either slow sand filters or mechanical filters which can handle from 125,000,000 to 250,000,000 gallons of water per acre daily.

There has been spirited discussion in many cities of the desirability of acquiring electric utilities. A number of cities which have followed this course are most enthusiastic and sometimes report that they are able to abolish general property taxes because of the earnings of the electric utility which are diverted to the support of the city government. In general, municipal ownership has made nothing like the headway among cities of the United States that can be noted in European countries. Approximately half of the electric

plants in the United States are publicly owned, but for the most part they are small affairs and generate hardly 5 per cent of the total power. The federal power projects in the Tennessee Valley and the Northwest are encouraging municipal distributing systems, with the result that during a recent period of two years 478,662 persons were added to the coverage of the publicly owned electric utilities. Yet even so only about 12 per cent of the population is served by these utilities.¹ The achievements of the municipal plants are diverse and depend to some extent upon the point of view which is held by the interpreter. Rates in general are lower under municipal ownership; service is sometimes not so satisfactory because of the size of the plant and the lack of the latest generating equipment. Municipal electric utilities do not pay taxes to the city and hence it has been claimed that their rates cannot be compared with those of privately owned utilities; however they do make contributions in lieu of taxes, which the Federal Power Commission has found to exceed the taxes paid by the private utilities.²

The number of cities owning and operating their own gas plants is comparatively small. Approximately fifty plants out of nine hundred fall into such a category and less than 2 per cent of the gas Gas for lighting and heating comes from municipal gas plants. For the most part, the cities engaged in this business have less than ten thousand inhabitants, though Philadelphia has been a glaring exception. There seems to be little prospect of any considerable increase in municipal activity in this field during the immediate future.

Periodically the question of municipal ownership of transportation facilities has reached a white-hot point in some of the large cities. Nevertheless, the record of cities in this field is in general Transportation less impressive than in the lighting and power business, for less than 2 per cent of the street railways in the United States are owned by cities. San Francisco, Seattle, and Detroit have been most active in street-railway management and in no case has the record been all that was expected; indeed experience has not been such that further expansion is being undertaken at the present time. In the rapid-transit field the capital outlay is so great that cities have been compelled to assume

¹ See Federal Power Commission, *Rates, Taxes, and Consumer Savings—Publicly and Privately Owned Electric Utilities, 1937-1939*, Government Printing Office, Washington, 1941.

² See *ibid.*

the initial responsibility, though they have not always operated the systems. New York, Boston, Philadelphia, and Chicago all have financed the building of subways out of public funds. New York City has recently taken over the operation of its subways from private companies and is the leading example of municipal ownership and operation of transportation facilities.

American cities have given more or less attention to markets for many years, despite the difficulties which have been encountered. Two

Markets general types of markets are operated: wholesale and retail.

The wholesale market is very important because it is an integral part of the process of distribution and the city seems the logical agency for providing facilities to bring the farmer and retailer together. The wholesale markets maintained by New York City, Chicago, and other large cities are mammoth affairs, though the average citizen may be more or less unaware of their existence because of their location in the wholesale district and the fact that they transact most of their business in the early morning hours. Retail markets have encountered the competition of the chain stores and in many cases have not been able to offer lower prices. Local farm markets have their place, but the large markets which some cities house in permanent structures no longer involve the farmers themselves in many instances. Cities such as Newark, New Jersey, and New York have recently invested large sums of money in some of these retail markets, but there is a question whether this has been wise.

During the 1930's there was a veritable craze in the direction of building municipal airports. Cities of three or four thousand inhabitants joined the procession and invested their small funds

Airports in airports that even with federal assistance have often been too inferior to serve a useful purpose. New York City, at the other extreme, has spent \$40,000,000 or \$50,000,000 on its La Guardia Airport which provides facilities for both land and water craft and is one of the best commercial airports in the world. Eight hundred or so cities now own municipal airports of one kind and another. Some of these have little or no use and indeed have virtually been abandoned, but those in large cities are frequently very busy places and definitely justify themselves. With the changes that have come in plane size, the expansion of commercial aviation, and the experience of some years, cities have been forced to enlarge their airports and pay greater attention to hazards of various sorts. .

PUBLIC SCHOOLS AND LIBRARIES

Public schools are responsible for the largest expenditure of any municipal activity. All cities, except the smallest which join with other political units for school purposes, provide educational facilities from the kindergarten through high school; many add junior colleges; and some of the largest including New York City, Detroit, Cincinnati,¹ and Topeka, Kansas, maintain full-fledged colleges.

Although the average citizen does not seem to get very wrought up over political domination of public works departments, recreational facilities, and other municipal enterprises, he professes to believe that education and politics do not mix. This widespread distrust has resulted in the partial or complete separation of school systems from city government in the majority of cities in the United States. The provisions which have been made to accomplish this purpose are so diverse that it is difficult to present a clear picture. Some states specify separate school cities which exist along side of civil cities and enjoy the same authority to levy taxes, appropriate public funds, and incur indebtedness; others provide that school affairs shall be entrusted to boards of education which are popularly elected. A study carried on by the University of Chicago a few years ago showed that in 139 out of 191 cities of 50,000 or larger school-board members are chosen by popular election and that only 22.6 per cent of these cities definitely integrate their school systems with the general structure of local government.² However, in many instances elected school boards depend upon city councils for financial support—48.2 per cent of the 191 cities referred to above belonged to this category.³ Despite all of the arguments which have been advanced against making the schools an integral part of municipal government, the University of Chicago research staff concluded that politics plays substantially as important a role in school systems that are independent as in the integrated setups. Thus it would seem that more might well be done in the direction of bringing schools into closer relationship with city governments. Such a step would probably lead to certain economies in purchasing of supplies and the maintenance of equipment; municipal facilities for handling bonded indebtedness

Relation of
Public
Schools to
City Gov-
ernment

¹ Cincinnati supports a university which has law, medical, graduate, and other faculties.

² See Nelson B. Henry and Jerome G. Kerwin, *Schools and City Government*, University of Chicago Press, Chicago, 1938, p. 10.

³ *Ibid.*, pp. 50-51.

would be placed at the disposal of school systems; election procedure might be simplified; and governmental authority would tend to be concentrated rather than divided.¹

Inasmuch as most cities prefer to elect their school boards rather than have them appointed by the mayor or chosen in some other way,

Election of School Boards it is necessary to consider certain questions which arise in this connection. Are separate school elections desirable?

Should school-board members be chosen on a nonpartisan basis? Is election by districts or at large to be preferred? The majority of cities choose their school-board members at regular municipal elections, though some 36 per cent of cities with populations of under 100,000 apparently use separate elections for this purpose. There is a difference of opinion as to which arrangement is preferable. Advocates of separate elections maintain that less partisanship will be manifested; opponents point out the costs involved and the fact that the number of voters turning out is distinctly less than in the case of regular city elections. Almost all thoughtful persons agree that partisanship has no place in superior school administration. Election at large has proved more satisfactory than election on the basis of districts.

School boards are supposed to determine general policies, decide on building programs, and care for financial matters, but after choosing a

Relationship of School Boards and Superintendents superintendent they should leave the routine operation of the schools to his supervision. Unfortunately many school boards like to have a finger in hiring and promoting teachers and in certain other things which they know little or nothing about. The superintendent might insist on being left alone

in such matters, but his job depends upon the school board and hence he frequently dares not assert independence. The interference of school-board members in the educational policies and personnel practices of schools may be fully as serious in effect as political influences.

Considering their role in connection with an informed body of citizens—so essential in a democracy—public libraries have not been generously treated by cities. Some cities do not even maintain public libraries; others give such niggardly support that there is almost no money for the purchase of new books. When the income of a city is reduced, one of the first agencies to suffer is fre-

¹ It is only fair to note that some of these advantages have been achieved on a cooperative basis despite political independence.

quently the public library. The average amount provided by cities over one hundred thousand population is not much over 50 cents per capita annually. There has been a wide diversity in the practices of cities relating to the organization of public libraries. Some cities set up independent boards; others place public libraries under the public schools; still others make them a part of some general administrative department, such as public welfare or recreation.

WELFARE, HEALTH, AND RECREATION

In small cities relief is usually not a municipal function, being entrusted to the county or township, though a good many small cities do carry on activities of this character. In the larger cities **Relief** municipal relief agencies seem to have the edge, though cities such as Chicago and Los Angeles depend upon their counties to attend to this task. In those cities which assume the responsibility for assisting the needy, no problem has required more attention or occasioned greater worry during recent years. Relief has been demanded in both rural and urban areas, but the seriousness of the problem has been particularly accentuated in cities. The 30 per cent of the people residing in 116 urban areas of the United States receive about half of the amounts disbursed by federal, state, and local governments for all forms of relief, while 70.7 per cent of all general relief paid out of public funds in 1938, before the national defense program started, went to these same urban areas.¹ Boston reported in 1938 that relief which was given to about one-fifth of all inhabitants actually cost more than all nonwelfare departments under the mayor. Prior to 1930 relief was largely handled by private organizations, but by 1938 less than 1 per cent of the amounts devoted to this purpose in the 116 urban areas came from private sources. The vast amounts of money required, the necessity of investigation and supervision of the individual cases, and the unwillingness of large numbers of citizens to face the problem realistically have taxed the resources of even the strongest cities. The burden has decreased recently as a result of improved economic conditions. New York City, for example, reported 654,825 persons on relief in March, 1941 as against 1,474,849 in 1935.²

¹ *Social Security Bulletin*, Vol. I, p. 18, December, 1938.

² Payments for relief dropped 49 per cent in New York City from October, 1935, to March, 1941. See *Annual Report of the Welfare Commissioner of New York, 1940-1941*, as reported in the *New York Times*, June 3, 1941.

In so far as cities were active in the welfare field prior to 1930 they usually concentrated on indoor or institutional relief. Thus they provided almshouses, homes for the aged, municipal lodging houses, and orphanages. Some of these institutions still are operated, but the major effort of cities in the public welfare field is now directed at outdoor relief. Money, grocery orders, food, clothing, medical assistance, fuel, legal aid, and rent are now given in their homes to those persons who after investigation meet the requirements.

**Outdoor
versus
Indoor
Relief**

The activities of small cities in the public health field may be almost purely nominal, with a local doctor designated to give a little of his time to the problems arising out of public health. In sizable cities full-time health officers are usually employed and receive reasonably adequate budgets for carrying on various programs relating to public health. Among the functions which municipal health departments undertake are the following: collection of vital statistics, control of communicable diseases, promotion of child health, inspection of milk, food, meat, and drugs, maintenance of hospitals and laboratories, the control of nuisances, the inspection of buildings, the direction of campaigns intended to arouse the people to the importance of public health, and cooperation with state and federal authorities in the stamping out of venereal disease.

More progress has been made in the direction of providing adequate parks and recreational facilities in cities of the United States during the last fifteen years than in any other corresponding period. Park areas have been substantially increased; existing parks have been improved so that they would meet recreational needs. Stimulated by the Federal government, cities have undertaken a large-scale program of supervised recreation.¹

It has been pointed out in discussing the housing program of the national government² that cities in the United States have been very backward in this field. Acting under authority of state law several hundred cities have now set up housing authorities which have drafted projects for submission to the United States Housing Authority which is primarily intended to promote low-cost housing projects in cities. Loans and grants are made by U.S.H.A. to these

**Public
Housing**

¹ See W. W. Pangburn, "Recreation to the Fore in American Cities," *National Municipal Review*, Vol. XXVII, pp. 465ff., September, 1938.

² See Chap. 31.

local housing authorities for the purpose of razing slum areas and constructing in their stead modern housing facilities which may be occupied by those whose incomes are such that they are self-supporting but not far above the subsistence level.¹

POLICE AND FIRE PROTECTION

Until comparatively recently cities did not undertake the tasks of police and fire protection in very serious fashion. Amateur police forces, frequently paid for by the property owners, were maintained to go about at night, while volunteer fire companies were at hand to offer their services in putting out fires. But in neither case was the service rendered adequate. As crime became organized and fire losses mounted, citizens demanded that cities attempt more effective control in these fields and the result has been that it is now taken for granted that cities will maintain professional police forces and full-time fire companies.

For some years there was a feeling that the police department could best be directed by a board, but experience proved that this was a mistaken idea and that a single commissioner is required for **Police Organization** decisive action. While a few cities continue to use the board system, it is now customary for the mayor to appoint a single official to head the police department and be immediately responsible for the conduct of the men who constitute the police force. Under the commissioner there is often a chief of police who is drawn from the ranks of professional policemen. Various subdivisions are established at headquarters to deal with traffic, murders, personnel records, identification, public relations, and property, while in a large city district stations in charge of captains are usually provided to supervise the direct work of the patrolmen.

With crime so well organized in the United States, population drawn from every corner of the earth, and the rewards of successful criminals apparently great, it is not surprising that police departments have the most difficult problems of any police in the **Police Problems** world. The murder rate in our cities is about twenty times that reported in England, for example, while burglaries run to approximately four times those of England. Then there is the task of regulating traffic on city streets, which were never intended in many cases for heavy motor movement. The fact that traffic is sometimes much more con-

¹ For additional information, see Nathan Straus, *What the Housing Act Can Do for Your City*, Government Printing Office, Washington, 1939.

gested than at other times adds to the complications, since it necessitates shifting policemen from their regular duties to special traffic work. Then there is the whole matter of politics, not only within the police department itself but in the courts to which the police have to take their cases. If guilty persons are released by politically minded judges, it serves notice on the criminal world that crime can be committed with impunity; moreover, policemen are discouraged from doing their best work if they have reason to believe that the courts will not support their efforts.¹

The use of wood in building, the carelessness of the American people, and the emphasis upon fire fighting rather than fire prevention in many cities contribute to the fire loss in the United States which far exceeds that of most other countries. In 1926 Dr. Upson² reported the annual per capital fire loss of certain countries as follows:

United States.....	\$4.75
Great Britain.....	0.72
France.....	0.49
Switzerland.....	0.15
Holland.....	0.11

The record in the United States has been improved since that time—indeed it has been cut approximately in half. More than that, it is only fair to point out that the urban fire loss per capita is only about half that of rural sections.³ Nevertheless, allowing for improvement and the higher rural share, cities in the United States still rank at the bottom in keeping fire losses down.

Small cities usually have only a single fire station where the few fire employees and the fire-fighting apparatus are housed, but sizable cities are divided into districts, each of which receives a firehouse. Small cities may employ three or four firemen in contrast to the hundreds and even thousands who are to be found in such cities as New York and Chicago, but interestingly enough they make a better showing on this basis than in the case of police depart-

¹ An excellent discussion of police administration may be found in *Municipal Police Administration*, Institute for Training in Municipal Administration, Chicago, 1938.

² *The Practice of Municipal Administration*, D. Appleton-Century Company, Inc., New York, 1926, p. 225.

³ See National Resources Committee, *Our Cities—Their Role in the National Economy*, Government Printing Office, Washington, 1937, p. 17.

ments.¹ The two-platoon system is used by most large cities—the firemen being divided into two groups or platoons, one of which is on duty for ten hours during the daytime and the other for fourteen hours at night. Firemen are alternated between the day and night shifts as a rule. Both large and small cities now depend entirely upon motorized equipment, which includes general trucks, ladder trucks, hose trucks, chemical trucks, and rescue wagons. Fire departments are usually headed by single commissioners who receive their positions from and owe responsibility to the mayor.

Increasingly during recent years cities have given attention to fire prevention and this accounts in no small measure for the impressive reduction made recently in fire losses. Not much can be done to change the type of construction of a city in a short time, but adequate building codes will accomplish a great deal over a period of years. Zoning ordinances may be used to segregate industrial plants in which the fire hazard is high, so that in the event of fire there will not be a general conflagration. There is much to be said for frequent inspection of premises to see whether fire hazards exist as a result of carelessness. Many basements have old newspapers, excelsior, rags, and other highly inflammable material, while backyards may contain similar fire hazards. Inspection by a fire department and insistence that premises be placed in a less dangerous condition would doubtless prevent many fires. Campaigns directed against the careless disposal of cigarette stubs also have probably served a useful purpose, though much remains to be done.

Importance
of Em-
phasis on
Fire Pre-
vention

CITY PLANNING AND ZONING

Although the formal planning activities of the national and state governments have been instituted quite recently, city planning has received the attention of fairly large numbers of people for many years.² Starting out as a movement to beautify cities, city planning expanded about 1915 to include land-use and other items primarily related to the physical aspects of city government. Since 1929 emphasis has been placed on "providing for the social and eco-

City Plan-
ning

¹ This is because the complexity of police administration increases more rapidly as population goes up. A small city of five thousand may have three policemen and five firemen. New York City has about twenty thousand policemen and something like seventy-five hundred firemen, while Chicago has slightly less than half as many firemen as policemen.

² The city planning movement in the United States is usually identified with the present century, though some attention was paid to beautification before 1900.

nomie betterment of the people in the community.”¹ Among the important items which the American City Planning Institute has listed are: housing, zoning, population and industrial trends, parks, recreation, land-use, airports, transportation, water supply, sewage disposal, public buildings, and public works. Forty-three states authorize their cities to deal with planning and several hundred planning commissions, usually consisting of from five to nine members, have been established to draft policies. In sizable cities full-time professional staffs may be employed to assist in carrying into effect the policies laid down by the planning commission.

It is probable that no phase of planning has received greater attention during the last quarter of a century than zoning.² More than fourteen hundred cities in the United States have seen fit to pass zoning ordinances which designate the use to which land situated in the various sections within a city can be put. Small cities sometimes specify three types of zones: purely residential, mixed residential and business, and business, while larger cities may find it desirable to provide zones for single-family houses, for single-family dwellings and apartment houses, for retail business, for wholesale business, for industrial plants, and so forth. Ordinances apply only to the future and rarely affect property already dedicated to a given use, though there is some agitation in favor of making them retroactive. City councils are ordinarily given authority to rezone land, thus avoiding a plan which is unduly rigid.

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¹ Quoted from a letter written by Mr. Walter H. Blucher, executive director of the American Society of Planning Officials, to the author.

² For additional discussion of zoning, see E. M. Bassett, *Zoning: The Laws, Administration, and Court Decisions During the First Twenty Years*, Russell Sage Foundation, New York, 1936.

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CHAPTER XLIX

TOWNSHIPS, VILLAGES, AND SPECIAL DISTRICTS

IF THE inquiring reporter stopped the average American on the street and asked him to name the various units of government to be found in the United States it is probable that he would be told that in addition to the government at Washington there are states, counties, and cities. A few would doubtless add territories and the District of Columbia and in New England the town would certainly come in for attention. However, it is improbable that the majority of people who constitute the population of the United States have more than a vague idea of the maze of governmental units below the county and city. Take the national government and add to that the forty-eight states, the approximately three thousand counties, and the more than three thousand places of over twenty-five hundred population and one arrives at a number somewhat in excess of six thousand. Yet Illinois alone has approximately seventeen thousand different governmental units and Los Angeles County in California can boast of some eighteen hundred governments and special districts for which taxes are levied. According to a study made a few years ago by the National Resources Committee there were 271 incorporated places in metropolitan New York City; 134 in Pittsburgh; 114 in Chicago; and 91 in Philadelphia.¹ Altogether it has been determined that there are in excess of 150,000 governmental units and districts in the United States.² Thus it may be seen that the number of states, counties, and cities is very small in comparison with the number of other governmental units that the ordinary citizen hardly knows exist. Needless to say, this is unfortunate in a democratic form of government, since it means that many, perhaps most, of these political units receive little public attention. They are, therefore, all too often the resorts of politicians who use them to their own advantage. No wonder that taxes soar and inefficiency is rife.

¹ See National Resources Committee, *Our Cities—Their Role in the National Economy*, Government Printing Office, Washington, 1937, p. 66.

² See William Anderson, *The Units of Government in the United States*, Public Administration Service, Chicago, 1934.

NEW ENGLAND TOWNS

It has been pointed out previously ¹ that the town system of local government developed in New England at the same time that the county was serving as the basis in the South. The county has now been superimposed upon the town system in Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, and Vermont; cities have also been chartered as the population has grown. Nevertheless, the town continues as the chief unit of local government in most sections of New England which are not urban in character.

There are three general types of towns in New England: entirely rural, rural with village or villages, and urban. As the term implies, the rural town is made up of open countryside and includes **Nature of a Town** no settlements of people. This type of town is particularly common in Vermont, New Hampshire, and Maine. The second type of town is primarily rural in character, but it includes one or more settlements of people, usually a few hundred in population. Finally, there is the urban town which is more or less entirely covered by residences, factories, and stores. While there is considerable variation in the area of towns, a commonplace size is thirty to forty square miles. Populations vary even more than do areas—in a rural town there may be two or three hundred people or even less, while at the other extreme are towns such as Brookline, Massachusetts,² with populations running into tens of thousands, which ordinarily would be designated as cities.

In contrast to cities, New England towns are not incorporated, but this is less important than it might seem on its surface, since they exercise many of the rights of municipal corporations. The **Legal Status** town is the creation of the state legislature and depends upon the state for authority to deal with local affairs. The exact powers of towns are usually laid down in general statutes or special acts which the legislature from time to time sees fit to pass.³

Though there is nothing like uniformity in the policies of state legislatures relating to towns, in general it may be stated that these units of government perform functions similar to those entrusted to counties and cities in other sections of the United States. **Scope of Town Jurisdiction** They have the power to levy taxes, appropriate public

¹ See Chap. 46.

² This town has a population of almost fifty thousand.

³ For a detailed treatise on town government in one state, see John F. Sly, *Town Government in Massachusetts: 1620-1930*, Harvard University Press, Cambridge, Mass., 1930.

funds, incur indebtedness, and own property; they are subject to legal suit and may themselves sue in courts of law. They may regulate the public health, safety, and morals within their borders by passing by-laws or ordinances. They administer poor relief, conduct public schools, and construct and maintain a network of roads. They may, if the need is sufficiently pressing, engage in supplying water, sanitary facilities, street lighting, public libraries, parks, and hospitals. Even in the most rural town a constable is provided to maintain order and simple provisions are made for fire fighting. In the towns which are entirely taken over by human habitations and business structures these services are, of course, more elaborate and approximate those to be encountered elsewhere in small cities.

The principal agency of government in the town is the town meeting which is held at least annually and may be called into special session as the occasion demands. In the towns which are not too **The Town Meeting** populous all of the voters are entitled to attend and participate in the town meeting, though many of them may not avail themselves of this privilege. If a town has more than four or five thousand inhabitants it is difficult to accommodate the voters in a single hall and hence it is sometimes provided that a limited town meeting be set up which is elected to represent the voters. Even if this is not done, the problems of a larger place are such that it is difficult for the assembled citizens to handle them. In populous towns a committee may be appointed to recommend action to the town meeting; the politicians who control the selectmen usually have their desires; and altogether the town meeting loses its vitality. But in the small towns which have from seven or eight hundred to four or five thousand inhabitants the town meeting is still often a very active affair. Notices are posted in conspicuous places beforehand to remind voters of the date; warrants are prepared containing the items of business which are to be considered at the meeting—and no other business may be brought to the floor. The first day of the annual meeting is often devoted to electing officers and at present usually involves the use of paper ballots.

But it is the assemblage of men and women, grandfathers and babes in arms, village storekeepers, schoolteachers, and overalled farmers from the remotest hillside farms which is the event of the year. Every road leading to the town hall is likely to be crowded on the morning of town meeting, for this is the day when not only town affairs will be decided but gossip exchanged, business transacted, old friendships and

rivalries renewed, and new acquaintances made. Picnic lunches are brought and shared with friends; children play games, the young engage in flirtation; and the oldsters exchange stories and try their mettle against ancient rivals. A leading citizen, often reelected again and again, presides as moderator; the town clerk keeps minutes; and the constable is there to maintain order.

Within the limits specified by state law, the town meeting is free to handle local affairs. It determines how the town funds shall be spent and what taxes shall be levied; it authorizes the borrowing of money. It decides whether a new school will be built and what roads will be hard-surfaced during the ensuing year. It may deliberate on whether the \$150 paid the constable annually is adequate—and it may be added that the constable and his friends invariably insert an item in the warrants of many towns “To see whether the town will authorize the payment of additional remuneration to the constable.” Where the system operates at its best, there is spirited debate on almost every item in the warrant and any proponent of change must make a good case before he can expect to have his project approved. The salty humor of some of the town philosophers relieves the proceedings, which last for hours, of tedium. Voting is by voice unless it is ordered that a standing vote be taken; it may be noted that the latter procedure is often necessary because of the prodigious ayes and nays of minority groups which are especially interested. After attending his town meeting the average citizen knows a great deal about what the town is doing and feels that he has had a part in determining public policies. Consequently there is not the appalling indifference and inertia all too commonplace in local affairs throughout the United States.

Inasmuch as the town meeting is not in frequent session and town problems require more or less constant attention, it is now customary to elect a board of selectmen¹ to act as agents in carrying out the decisions of the town meeting. In addition, the selectmen usually have a certain amount of discretion in dealing with minor matters which arise between town meetings. These boards, usually three or five in number of members, include the leading citizens of the town, enjoy considerable prestige, and take their responsibilities quite seriously. They hold office for a single year in most towns, though in Massachusetts a three-year term is common. In many places select-

**Functions
of the Town
Meeting**

**The Se-
lectmen**

¹ Rhode Island designates these officials the town council.

men are elected again and again, until they come to a position of great influence, while in other towns there is a feeling that the honor is one that should be passed around among the most prominent families. In many respects the selectmen resemble county boards, but their legal authority is distinctly less because policies are laid down by the citizens assembled in town meeting. However, bills against the town are allowed by the selectmen; contracts are let; roads and sewers are supervised, though the direct work may be entrusted to a town engineer. In the smaller towns selectmen may decide what relief shall be given to the poor and act as assessors of general property.

A visitor to New England is almost always impressed by the number of officials elected even by a small town and the query is often made as to what there is for all of these to do. The truth is that many of them have little or nothing to do, but public office is an honor in a New England rural town which every citizen of any standing hopes to receive at least once during his lifetime. Hence there is a school committee to supervise the schools; overseers of the poor to administer charity; a board of health to promote proper health; cemetery committees to assume the care of burying grounds not otherwise controlled. A town clerk keeps the records of town meetings, births, deaths, and many other matters and is often a full-time officer who holds his position year after year. Fence viewers, poundkeepers, and sealers of weights and measures, are among the officials elected by many towns, though there may be little for them to do nowadays. A constable and assistants make arrests and serve summons. If all of these officials received even modest remuneration, the smaller towns would be bankrupt, but except for the clerk and perhaps the selectmen and constable the compensation is entirely confined to honor—there is not even the substantial “honest graft” which is associated with public office in many communities.

The New England town at its best embodies democratic principles in a relatively pure form. The alertness of the citizens, the eagerness to hold public office, and the sharing of responsibility for public affairs are a refreshing contrast to the conditions that prevail in the country as a whole. Hence the town form of government under favorable circumstances deserves a great deal of praise. On the other hand, it has its problems, particularly in those towns which are very small or larger than a few thousand. In the former the number of people and the scanty resources make it difficult

**Other
Officials**

**Record of
the Town
Form**

to operate the necessary machinery and in some of the remote plantations of Maine, where only a handful of people still live, there is no organized town government.¹ In the larger places problems are involved; town meetings are impersonal; and local pride is less in evidence. The result is that the record in such places is not good in most cases and it seems preferable to abandon the town form and request municipal status.

TOWNSHIPS

Outside of New England there are numerous states that give some recognition to towns, or "townships" as they are frequently called. But this unit of government tends to be artificial in these states, even if the congressional township of thirty-six square miles is not used. Several states, including New York, New Jersey, Illinois, Wisconsin, Nebraska, Minnesota, Michigan, and the Dakotas, go so far as to retain the town meeting in at least some of their townships. However, comparatively little responsibility is entrusted to such meetings; attendance is ordinarily far from general; and the entire atmosphere is in great contrast to that to be observed in the more vital New England towns. In Ohio, Pennsylvania, Indiana, Iowa, Kansas, and Missouri there are civil townships, as distinct from the congressional townships which are to be found in the western states as geographical units for survey purposes, but the town meeting is not a feature.

Townships which have governmental functions to perform are provided with an array of officers, including trustees, clerks, treasurers, assessors, justices of the peace, constables, and advisory Township boards. Many of these have little or nothing to do and could Officials be dispensed with quite easily; others may be dictators in their small domains. Where assessing is done on the basis of the township, the assessor and his deputies lay the foundations for the entire general property-tax structure throughout a state, though they may do their work in an indifferent fashion. Justices of the peace may have a good deal to do or they may find that their cases amount to but a handful during the course of a year. The township trustee, as recognized by Indiana, is by all odds the most powerful of the various township officers; indeed he violates fundamental principles of the American political system because of his unchecked authority. Though elected by the township voters, the trustee frequently runs his office with a

¹ Conservation officials sometimes handle what public business there is.

high hand. In Indiana, for example, he employs the schoolteachers, contracts for school buses, sees that the school facilities are in order, and purchases school supplies. It is proverbial that he performs these functions on the basis of partisanship, personal friendship, and nepotism. Poor relief is placed under his charge, though his record in this field is far from impressive. So great is his authority that he can certify the necessity of borrowing money for this purpose and the county finance officers have to issue the bonds, though they writhe under the irresponsible system which in Center Township in Indianapolis has added more than a million dollars to the bonded indebtedness.

Almost without exception those who have investigated township government outside of New England agree that it leaves much to be desired and indeed could probably be abandoned entirely with benefit to the public. Professor Bromage, for example, has pointed out that the township is an anachronism in this day of good roads and automobiles and that it results in waste and inefficiency.¹ The Indiana Commission on Governmental Economy reported a few years ago that almost nothing good could be found in township government and that it is honeycombed with petty politics of the worst variety, nepotism, and general inefficiency. Nevertheless, this unit of government is strangely persistent. A few states, including Minnesota, Michigan, and Oklahoma, have made a little progress in consolidating townships or giving their functions to counties, but the opposition of the township officials and their friends together with local pride has been able to prevent any general movement in this direction.

VILLAGES

When rural areas become sufficiently inhabited that they take on some of the urban characteristics, the need frequently arises to make a special governmental provision. These little aggregations of humanity may require sanitary facilities, a water system, street improvements, and other services which are not ordinarily furnished by counties or townships, but they are not populous enough to justify a status as cities. Hence steps are taken to organize a village or borough, as the various states designate these small semiurban units of government. In general, a village may be expected to have a population of a few hundred people, but there is considerable diversity. Villages with less than one hundred inhabitants may be encountered in some states,

¹ See *National Municipal Review*, Vol. XXV, pp. 585ff., October, 1936.

while at the other extreme stand places, such as Oak Park, Illinois, which has more than sixty thousand people. The various states pass laws which regulate village government, laying down minimum population requirements and specifying what steps are necessary to acquire this status. There are at present more than ten thousand incorporated places with populations of one thousand or less in the United States and more than three thousand which fall into the one thousand to twenty-five hundred population class.¹

It is fitting that village government should be comparatively modest in character in the great majority of cases, though in Oak Park it is, of course, necessary to maintain governmental services which resemble those of sizable cities. It may be added at this point that village status was never intended for places that can show thousands of inhabitants and that Oak Park clings to this form out of sentiment and dislike of its giant neighbor, Chicago. Occasionally a village will resemble the New England town in that it will be authorized to use a village meeting of voters to transact business, but ordinarily governmental affairs are entrusted to a village board and elective officials. These boards, sometimes known as councils, trustees, or burgesses, resemble a city council, though their authority may be somewhat more limited by state law than is the case with city councils. But they levy taxes, decide how public funds shall be spent, pass bylaws for the regulation of local conditions, and have general oversight of the affairs of the village. A separate mayor may be provided or the presiding officer of the council may be the formal head of the village. Clerks, treasurers, marshals, and other officers, usually elective in character, perform the functions which their titles indicate.

Village
Govern-
ment

OTHER UNITS OF GOVERNMENT

Instead of recognizing the town or township, the states of the South and many of those in the West subdivide the county into magisterial districts, precincts, election districts, and so forth. These areas usually have no organized government, but are merely divisions of a county for election purposes, school administration, the organization of justice courts, or road maintenance. The functions performed by towns and townships in New

County
Divisions
in the
South and
West

¹ Some of these latter are cities, while others fall in the category of villages. Under the United States Census definition which fixes the minimum city population as twenty-five hundred, they are all villages or "other incorporated places."

England, the Middle Atlantic states, and the Middle West are taken care of by the counties in these states.

Finally we arrive at the jumping-off-place as far as governmental units are concerned: the special district, which is rarely in the lime-
Special light, yet in numbers exceeds any other unit. Some of these
Districts districts cover rural areas; others stretch over both rural and urban areas; while still others are entirely within cities. Altogether they make a pattern which is intricate beyond the comprehension of even well-informed citizens.¹ They exist as a result of various state laws which authorize their creation and define their powers. They are legally independent of cities, counties, and other local governments, though they cover the same territory and include the same people and, what is particularly important, tax the same property. They have been set up to handle special functions which for one reason or another a state has not seen fit to entrust to a county or a city. Some of them are very modest in program, spending perhaps no more than a few hundred dollars per year. On the other hand, there are metropolitan water and sanitary districts, which control property valued at millions of dollars. The Sanitary District of Chicago and the Metropolitan Water District of Massachusetts may be cited as examples of districts which employ larger numbers of workers and have larger budgets than most counties or cities.

There are five general types of special districts which are to be encountered: (1) educational, (2) sanitary, (3) water, (4) public utility, and (5) miscellaneous. Educational districts, commonly des-
Various igned school districts, usually exist to provide educational
Types of facilities for people who live in rural or semiurban areas.
Special
Districts

In the day of the one-room red schoolhouse there were few of these, but consolidated primary schools and high schools have made it necessary to join all or parts of several townships, villages, and other local units into districts for the support and administration of these schools. In some states there are school districts which cover the same territory as cities, since it is not regarded as desirable to integrate school administration with ordinary municipal government. Sanitary districts are largely confined to metropolitan areas where there is need to make expensive provision for the disposal of the sewage of a number of cities, villages, and so forth. Water districts may be set up for the

¹ For a good discussion of this, see Kirk H. Porter, "A Plague of Special Districts," *National Municipal Review*, Vol. XXII, pp. 544ff., November, 1933.

purpose of building reservoirs for the impounding of surface water and constructing distribution mains to carry this water many miles to the cities and villages which require it. Or they may be of the reclamation variety frequently encountered in the semiarid states of the west—California alone has approximately seven hundred of these—where rivers are dammed to store water for irrigation purposes. A third type of water district has as its end the construction and maintenance of levees and dams for flood control. Public utility districts are more or less self-explanatory; their function is to construct and operate electric generating or distributing systems and other utilities. Finally, there are miscellaneous districts which have charge of parks, forests, highways, and many other services.

It is doubtful whether there is any other country in the world which maintains as many local units of government as the United States. Most of the functions performed by all of these governments are essential, but there is duplication at times and all too frequent inefficiency because the units are too small to carry on their work in a satisfactory manner. Perhaps most serious of all is the fact that many of the special districts have the power to levy taxes, spend money, and incur indebtedness without reference to public opinion or indeed any adequate check. They operate more or less in the twilight because they are so numerous and diverse that the majority of citizens hardly realize that they exist at all. Many of their functions should be placed under the counties, cities, and other regular units of government if responsible administration, efficiency, and economy are desired.

Undue
Complex-
ity of the
System

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APPENDIX

CONSTITUTION OF THE UNITED STATES

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes¹ shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.² The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

¹ See the 16th Amendment, below, p. 1074.

² Partly superseded by the 14th Amendment. (See below, p. 1073.)

SECTION 3. 1. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof,¹ for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.¹

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualifications to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

¹ See the 17th Amendment, below, p. 1074.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. 1. The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures ;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States ;
7. To establish post offices and post roads ;
8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ;
9. To constitute tribunals inferior to the Supreme Court ;
10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations ;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;
13. To provide and maintain a navy ;
14. To make rules for the government and regulation of the land and naval forces ;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;
17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings ; and
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.¹

5. No tax or duty shall be laid on articles exported from any State.

¹ See the 16th Amendment, below, p. 1074.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION 10. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECTION 1. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

¹ The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of

¹ The following paragraph was in force only from 1788 to 1803.

votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.¹

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.²

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress

¹ Superseded by the 12th Amendment.

² See 20th Amendment.

may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. 1. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a state and citizens of another State;¹ — between citizens of different States, — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. 1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

¹ See the 11th Amendment, p. 1072.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

[Names omitted]

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

ARTICLE I¹

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

¹ The first ten Amendments adopted in 1791.

APPENDIX

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI¹

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

¹ Adopted in 1798.

ARTICLE XII¹

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;— The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII²

SECTION 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV³

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

¹ Adopted in 1804.² Adopted in 1865.³ Adopted in 1868.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV¹

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI²

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII³

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one

¹ Adopted in 1870.

² Passed in 1909; proclaimed, 1913.

³ Passed 1912, in lieu of paragraph one, Section 3, Article I, of the Constitution and so much of paragraph two of the same Section as relates to the filling of vacancies; proclaimed, 1913.

vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII [Repealed by 21st Amendment] ¹

After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the states by Congress.

ARTICLE XIX ²

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

The Congress shall have power by appropriate legislation to enforce the provisions of this article.

ARTICLE XX ³

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as

¹ Submitted by Congress, December, 1917; proclaimed January, 1919.

² Proposed in 1919, adopted in 1920.

³ Proposed in 1932, adopted in 1933.

President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

ARTICLE XXI ¹

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

¹ Proposed in February, 1933, and received the approval of the requisite three-fourths of the states by November, 1933.

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